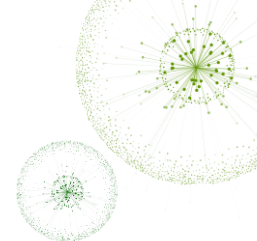


Independent Review

United Super Pty Ltd as trustee for the Construction and Building Unions Superannuation Fund

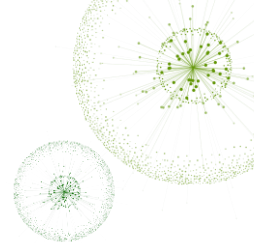
27 November 2024





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1. EXECUTIVE SUMMARY

With assets totally nearly \$4 trillion, superannuation has become a critical financial services feature of the Australian economy.

While superannuation was originally a product created for, or at least most commonly adopted by, the well off, the industrialisation of workers' capital through the industrial bargaining process of the *Prices and Incomes Accord* has seen superannuation become an employment right which aims to improve the retirement future of all workers. It is a prime example of economic principles of the trade-off between current and future consumption, and a lifecycle approach to income provision and protection.

Over the decades, it has evolved and matured in terms of investment, governance, and regulation. Given its purpose of holding assets to deliver retirement income, superannuation is thus subject to more scrutiny and governance than most other sectors. Rightly so, as failure can be catastrophic for an individual and for investment at large in the economy.

From its very humble beginnings, the industry has had a 'free run' for a long period of time. The sector has grown substantially, supported by tax incentives and industrial mandates, together with progressively higher rates of compulsory contributions. Of course, one positive effect of this is the ability of superannuation funds to invest for the long term and in less illiquid assets than other entities – important investment horizons in the economy, the absence of which would, arguably, lead to sub-optimal economic performance. But this free run is coming to an end, as the system continues to mature and approaches a financial pivot point where retirement income payments grow significantly as the population ages.

This poses a new complexity for the industry which must be navigated, with close attention being paid to investment mandates, governance and performance.

Typically, every superannuation fund has sought to solve for the tryptic:

- grow the fund (new members);
- reduce costs (efficiency and waste); and
- improve performance (drive more optimal rates of return).

This simple equation, though, requires a complexity of understanding members and their needs over a lifecycle, driving loyalty to the fund to enable more longer-term investment mandates even while facilitating choice, the holding of trust through product and service on what is a long-term insurance product for an individual, and through sheer size managing portfolio risk and liquidity, especially as the customer base ages.

This too, is the same task which regulators must address.



The debate on superannuation is not without political overtones, as there are strong industrial elements to this sector, but governance and regulation needs to reflect the size and maturity of the entities – giving equal weight to prescriptive guidance for individual entities against the financial stability impacts of such guidance.

With the attention being paid to superannuation governance and investment, and the particularly critical financial and economic role it plays, it is pertinent to observe that despite apparent differences between superannuation and other corporations it will be important for the Australian Prudential Regulatory Authority (**APRA**) and the Australian Securities Investment Commission (**ASIC**) to pay close attention to consistency between governance for superannuation funds and corporations more generally. A growing divergence needs to be managed with an abundance of caution.

This Review was commissioned on account of APRA's concerns about whether board members were fit and proper and whether certain expenditures were being made in accordance with the Best Financial Interests Duty (**BFID**). This Review is not a legal review of decisions nor is it a comprehensive view of board governance; rather, it is a review of the processes and frameworks and governance which relate to the two areas of APRA's concerns, namely, the process of decision making around the fit and proper person test for board appointments and on compliance with the BFID requirements.

Three factors have sat at the core of the conduct of this Review:

1. The importance of the primacy of boards as the bearers of risk and empowered to make strategic decisions;
2. The imperative that appropriate systems, processes, and governance are in place to enable boards and management to make the best, most informed, decisions to meet their fiduciary and legal obligations; and
3. That the guiding principles for a governance review, even a partial one such as this Review, should revolve around transparency (of decisions and decision-making); consistency (from strategy to operations); and rigour (in the tools, frameworks, and method used for analysis).

These three factors weave a thread through the approach and analysis in this report and underpin the findings and recommendations.

The complexity of the tryptic challenge, with the special role of superannuation in retirement policy, and the corporate governance of an individual entity and the stability of the system as a whole, are undertones which run through the evaluation in this report. It is through this lens we urge the reading of this report and the recommendations.

Fit and Proper Requirement

Construction and Building Unions Superannuation Fund (**Cbus**) is an industry-based fund primarily focussed on the construction, building and allied sectors in terms of Member base.



This Review has interviewed all existing Directors, two of the three Construction, Forestry, Maritime, Mining and Energy Union (**CFMEU**) Directors who resigned when the CFMEU was placed into administration, and the Directors nominated to the Board by the new CFMEU Administrator.

The level of cooperation was exemplary and generated great insight into the technical skills and experience of the board. Engaged and enlightened discussions were a feature of these interviews and belie much of the public commentary on the question of fit and proper. It is instructive that a 'pub test', attractive as it may be for media consumption, is not a sufficient condition for a fit and proper person test. While this is not without some weighting, a focus on the skills and experience needs of a board and that of individual members (i.e., an individual and collective approach to skills and experience) will better serve the governance aspect of fit and proper more rigorously and consistently.

The utility of an Equal Representation Model of governance, although not canvassed in detail within this report, is a matter that has been subject of scrutiny both historically and today. The question persists whether the model ensures the right mix of skills and experience to oversee fund operations and act in Members' best financial interests. Scrutiny that suggests the model leads to a limitation of skill (i.e., in order to meet representation requirements, then compromises must be made on the skills of Members appointed to the board) does not appropriately reflect the robust governance mechanisms put in place by organisations to fill and maintain board positions, nor recognise the unique protection of Member and employer interests by bringing those voices directly to a board meeting room.

Importantly, individual board members must be assessed against the collective experience and cultural mindset of the board. **In the case of Cbus, we have made recommendations for improvements in relation to the process and documentation for fit and proper, against the backdrop of a finding that Directors met the fit and proper person test.**

An important question considered by this Review, and the subject of a recommendation, is whether, under the Equal Representative Model, Member affiliation (be that union or employer) creates an inherent conflict of interest which should be a standing declaration. Simplistically, and narrowly defined, there is a logic to this. However, in a more fundamental context, it is problematic for an Articles of Association, which gives rise to a representative model, to have a duly constituted Director also be the subject of an inherent conflict of interest by virtue of being a representative Member. This would be a corporate governance logical inconsistency. **However, in the interests of transparency and perceptions, rather than an inherent conflict of interest, this Review recommends that a standing declaration be adopted.**

Through our Review, it was apparent that the Board was well versed in the questions of conflict of interest, had procedures in place to manage this, and held each other in good regard with respect to the approach to being a board member. Rather uniquely, and not surprising given the representative model, board members had strong philosophical differences in the industrial arena but had very



strong positive reflections on each other in terms of focus and commitment to the board and the best interests of Members.

The Best Financial Interests Duty

The BFID is an important and unique feature of corporate governance in its application to superannuation funds. The inherent principle is clear – the need to always act in the best financial interests of members – not inconsistent with the more general principle in corporate governance that requires Directors to act in the best interests of shareholders. Indeed, this is a key feature of the corporation as a commercial entity.

In the realm of superannuation, this takes on more granular definition on the grounds that the product of holding someone’s retirement savings is inherently of more attention with respect to public value; and that as the size of the sector grows, the collective importance of the sector in the economy and to retirement policy as a whole was too valuable to be left purely to commercial forces.

Hence, the extent and nature of scrutiny by APRA of the area of expenditure, as given expression by the BFID. The ultimate aim here is to keep driving down costs to members (one of the tryptic challenges) and that every item of brand building, marketing expenditure, and industry partnerships should be the subject of rigorous cost benefit analysis for decision making by the board.

In principle, this is a sound requirement, in its application it may be more problematic.

This problematic operationalising of the principle appears in its quantification, and in its piecemeal nature. To develop a member experience and build trust and connection to an organisation requires at a minimum ongoing member touch points and an information and awareness campaign. Each element is critical in its own right but adds more to brand and trust in its repetition and campaign-like nature – to drive customer growth (another of the tryptic challenges) and attachment. Indeed, this is the basis of the best retail brand building efforts by corporations in economies around the world. To assess the cost-benefit of individual elements may well, methodologically, miss the collective benefits of actions. Moreover, a piecemeal approach, partnership by partnership, may not well address a more fundamental question of whether BFID applies to every member, cohorts of members, or other category segmentation of the member market both now and in the future. In other words, there is, necessarily, market segmentation which may be addressed by some partnership arrangements relative to others. A homogenous approach to BFID would be anathema to brand marketing and customer experience – giving further weight to ensuring that a non-piecemeal approach to BFID is recognised.

Nonetheless, it is clear in our Review that Cbus has failings in the design and operation of its BFID arrangements. This assessment is not an assessment of the individual cases we looked at, nor a legal review, but on the process and governance of complying with BFID. **It is our assessment that lack of**

consistency, appropriate process, appropriate governance, and necessary rigour, are all areas for improvement and currently lacking for the determination as to whether expenditure decisions have been made in the best financial interests of members. This is not to question intent or whether ultimately decisions are in the best financial interests of members or not – it's just that the documentation, systems and processes do not allow for that decision to be concluded clearly. As a result, we were unable to conclude whether the Expenditure Decisions were made for the sound and prudent management of the Trustee's business operations or if they achieved the intended purpose and stated benefit.

The Review makes a number of recommendations with respect to the design and operation of the BFID arrangements – in the interests of developing appropriate information and documentation to drive better decision making by the Board and management.

Concluding comments

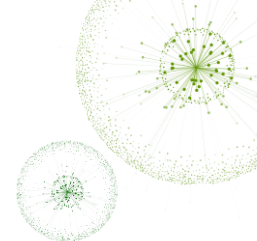
This Review has been conducted in difficult circumstances with much public commentary about the issues, and tight timelines. Through this Review, the cooperation of the Board and management of Cbus was exemplary, and APRA was a helpful participant in soundings throughout the Review – a 'no surprises' approach was adopted out of both respect for the regulator and the desire to see corporate governance improvements at Cbus.

APRA has rightly sought actions on good governance given the issues surrounding the Cbus Board – more by associations than performance. This is important but may have flow on consequences more generally for corporate boards in Australia under the auspices of APRA and/or ASIC, especially given the nature of media commentary on various corporations in the public domain. 'News heard' is an important factor but should not become the stand-alone arbiter of good corporate governance.

As the Review has progressed, the critical importance of decision making by boards, and the risk appetite of boards and the regulator have become clearer.

This Review has attempted to provide a balanced view of some fundamental issues underlying the scope of the Review – all in the interests of driving better decision making by a board in a market economy.

Change is not pre-ordained, and the status quo in governance is dangerous. Good principles, systems, and processes will ensure the continued evolution of governance at Cbus and in the superannuation sector more generally.



2. RECOMMENDATIONS

Outlined below is a summary of the recommendations that arose during this Independent Review.

For detailed findings, observations and recommendations, refer to **section 5 and 6** of this Report.

Table 1: Summary of Review recommendations

SUMMARY RECOMMENDATIONS FROM THIS REVIEW	
Recommendation	Details
Design of Fit and Proper Arrangements	
Recommendation 1.1	Revise the rating scale guidance for the Board Skills Assessment to place more emphasis on practical experience and provide firmer guidance on the experience required to justify each rating. Consider increasing the number of rating options to provide more flexibility for Directors and to better capture differing degrees of skills and experience.
Recommendation 1.2	Establish a process that allows for greater degree of review and challenge of annual Director Skills Assessments by the Company Secretariat and ultimately the Chair of the Board to ensure consistent and accurate application of the assessment criteria.
Recommendation 1.3	Uplift the annual assessment to include a more rigorous review by the Company Secretariat of the Director self-assessment to confirm that there are no other factors that may inform the assessment of the ongoing fit and proper assessment to complement the existing Director declaration.
Recommendation 1.4	Document, within the Fit and Proper Policy, a requirement for the Company Secretariat to review and assess the information submitted by Directors in their Annual Declaration, as part of the annual assessment of fit and proper.
Recommendation 1.5	Establish a process to document and retain records of the fit and proper checks completed as part of the annual assessment, including the outcome of the review of Directors' declarations.
Recommendation 1.6	Establish a formal mechanism for the Board to reject a nominated individual in exceptional circumstances.
Recommendation 1.7	Update the Director Appointment, Performance and Renewal Policy to specify the information that should be presented to, considered and documented by the Board when assessing and approving tenure extensions.
Recommendation 1.8	Formally record the Director's representative member or employer organisation in the Register of Relevant Interests and Duties.



Reperformance of Fit and Proper Assessments

There were no recommendations in relation to this scope of the Review.

Conduct Fit and Proper Assessment

There were no recommendations in relation to this scope of the Review.

Design and Operation of the Best Financial Interests Duty Framework

Policies and Frameworks

- | | |
|---------------------------|--|
| Recommendation 2.1 | Review and uplift the BFID Framework, Partnership Agreements Policy and Financial Delegations and Expense Policy to: <ol style="list-style-type: none"> a) Set out and align the classification and definition of expenditure in relation to the BFID. b) Align the BFID Framework and the Partnership Agreements Policy. c) Clearly outline which policy or framework applies for each type of expenditure decision, including associated templates. |
| Recommendation 2.2 | Review and uplift the Partnership Agreements Policy (and any associated documents) to: <ol style="list-style-type: none"> a) Align the classification and definition of expenditure to the BFID Framework and other related policies and frameworks. b) Document the requirement to align expenditure to the Trustee's relevant financial year Corporate Plan (including the relevant strategic pillars). c) Document how to quantify measures of success (defined in the Partnership Proposal) including the expected outcomes to Members and any differences across cohorts. d) Outline the process for monitoring and documenting measures of success. e) Outline the detailed BFID information that must be incorporated into the Partnership Proposal (aligned with the BFID Assessment templates). f) Clearly set out the roles and responsibilities for the preparation, review and approval of the Partnership Proposals, Partnership Agreements and Benefit Schedules, including the ongoing lifecycle of oversight and monitoring. g) Insert detailed guidance on the information and steps that form the BFID Assessments. |



Recommendation 2.3	Uplift the BFID training to: <ol style="list-style-type: none"> a) Include the recommendations for the BFID Framework and policies in this Report. b) Incorporate the requirements of the Partnership Agreements Policy. This should include the process for preparing covering proposals, review, approval, oversight and reporting for industry partnerships expenditure.
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Proposals and Supporting Analysis

Recommendation 3.1	Uplift the Partnership Proposals (and related material under the BFID Framework) to include specific guidance (refer to the recommendation for detail as to what this specific guidance includes).
Recommendation 3.2	Uplift the Partnership Spend Assessment Framework to provide specific guidance on the methodology, assumptions and rationale for the assessment process.
Recommendation 3.3	Define and document a formal review process for the Partnership Spend Assessment Framework.
Recommendation 3.4	Include the Partnership Spend Assessment Framework as part of the fund level model review, or equivalent, process.

Partnership Agreement and Benefit Schedule

Recommendation 4.1	Update the Partnership Proposals and Benefits Schedule to enable the incorporation of relevant qualitative and quantitative metrics for each of the benefit channels.
Recommendation 4.2	Update the Partnership Agreements Policy (or an associated procedure document) with guidelines on how to apportion relevant qualitative and quantitative metrics (including dollar value) for each of the Benefit Channels within the Benefit Schedule and Partnership Proposal to enable the monitoring of financial benefits received or not received during the benefit period.

Ongoing Assessment and Monitoring of Partnership Agreements

Recommendation 5.1	Uplift the assessment template to support robust oversight and monitoring of the benefits and the intended Member outcomes of the Partnership Agreements and Benefits Schedule.
Recommendation 5.2	Within the Partnership Agreements Policy, or associated procedure, include specific process and guidelines in relation to monitoring of benefits, conflicts and risks as part of the Pulse Check and End of Period Assessment.
Recommendation 5.3	Uplift the benefits section within the Partnership Agreement, Benefit Schedule and Partnership Proposal to incorporate the dollar value attributable to each benefit channel, enabling effective monitoring of benefits to be paid or refunded.



Recommendation 5.4 Uplift the Partnership Agreements to include a requirement for formal documented reporting and attestations from partners (including CFMEU) at the Pulse Check and End of Period Assessment points, to facilitate robust reconciliation and validation of the benefits provided.

Governance and Reporting of Industry Partnership Expenditure Decisions

Recommendation 6.1 Incorporate within the Partnership Agreements Policy, and in relevant Management Committee and Board Committee Charters, requirements or Board delegations, where applicable, for:

- a) The Industry Partnership Review Committee (**IPRC**) and CEO to recommend proposals for new Partnership Agreements and material changes to Partnership Agreements, regardless of the value of the expenditure, to the Member and Employer Growth Committee (**MEGC**) for approval.
- b) The IPRC and CEO to approve renewals of Partnership Agreements and immaterial changes to Partnership Agreements.
- c) The MEGC to approve proposals for new individual Partnership Agreements regardless of the value of the expenditure. and material changes to Partnership Agreements.

Recommendation 6.2 Amend the Board Charter, MEGC Charter, and related governance documents, to include a requirement for the Chair of the MEGC to be an independent Director.

Recommendation 6.3 Uplift the reporting from the IPRC and CEO to the MEGC, and increase the frequency, to provide comprehensive quarterly reporting which includes:

- a) An overview of the Pulse Check and End of Period Assessments results for all Partnership Agreements, including analysis of qualitative and quantitative metrics to support overall performance, tracking against or achievement of the stated Member outcome and strategic initiatives, any identified breaches and actions to remediate (if applicable).
- b) All Partnership Agreements that have been renewed including a summary of the completed assessment which supported the renewal, the partner performance over the period (with an analysis of qualitative and quantitative metrics) and confirmation as to whether the stated Member outcomes of the Partnership Agreement during the prior period were achieved.

Recommendation 6.4 Uplift the reporting from the MEGC to the Board on a quarterly basis, to include:

- a) A summary of all new Partnership Agreements, renewed Partnership Agreements and Partnership Agreements which have materially changed, which were approved by either the IPRC and CEO or the MEGC during the quarter. This includes an overview of the assessment, and relevant metrics, supporting how the stated

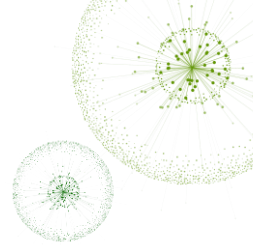


Member outcome would be achieved and how it is in Members' best financial interests.

- b) A summary of all current Partnership Agreements, including the qualitative and quantitative metrics to support the performance of the partner against the Partnership Agreement and Benefits Schedule (with tracking against or achievement of the stated Member outcome and strategic initiative).

Assessment of Past Expenditure Decisions

Recommendation 7.1 The recommendations (2.1 to 6.4) as detailed above and explained in **section 6.1** of this Report, provide for a systemic uplift in the ability of the Trustee to make decisions in line with the BFID requirements. Once these recommendations have been actioned, the Trustee should review and reassess the past Expenditure Decisions which have been the subject of this Review.



3. CONTEXT: INDUSTRY ENVIRONMENT

For the majority of working Australians, choosing a superannuation fund will be one of the most significant financial decisions they ever make. The management and investment of an individual's superannuation directly impacts when (and how) they can retire. Insurance that accompanies some superannuation products can also provide important financial protection during times of accident, illness or death.

Today, superannuation plays a fundamental role not only in Australia's retirement system,¹ but also our broader economy. As at the end of June 2024, superannuation assets totaled \$3.9 trillion, an increase of 0.4 per cent from the previous quarter.²

A registrable superannuation entity (**RSE**) licensee is the entity that holds the licence to operate a superannuation fund in Australia. Due to the profound impact that superannuation has in Australia, there are mandatory governance requirements in place for RSE licensees to meet. These practices require (amongst other matters) that superannuation funds nominate fit and proper directors to oversee performance and compliance with strategic objectives, and make decisions in the best financial interests of members. These governance practices are maintained, and enforced, by complex legislative frameworks and prudent regulators that protect Australians and the broader Australian economy.

Although the underlying principle of the Australian superannuation system is simple, the evolving legislative and regulatory landscape has led to an industry environment that can be complex for members to navigate. This complexity is evidenced by the difficulty that the industry itself has encountered in defining the objective of superannuation in contemporary Australia. The 2014 Financial System Inquiry identified a need to rectify the absence of a specific overall objective for the superannuation industry, leading to multiple consultations and parliamentary debates on the appropriate wording and approach.³ Currently, the wording that is awaiting passage through Parliament is that "*the objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way*".⁴

The call out within the proposed objective to 'preserve savings' is ultimately achieved through long-term investments made, and managed, by a superannuation fund. The ability of superannuation

¹ Australian Law Reform Commission, May 2023, '*Background Paper FSL11: Legislative Framework for Corporations and Financial Services Regulation*', Superannuation and the Legislative Framework for Financial Services <<https://www.alrc.gov.au/wp-content/uploads/2023/05/FSL11-Superannuation.pdf>> (accessed 23 October 2024) pg. 1.

² Australian Prudential Regulation Authority, '*APRA releases superannuation statistics for June 2024*' (Media Release, 29 August 2024) <<https://www.apra.gov.au/news-and-publications/apra-releases-superannuation-statistics-for-june-2024>> (accessed 30 October 2024); The Association of Superannuation Funds of Australia, '*Super Statistics*' <<https://www.superannuation.asn.au/resources/super-stats/>> (accessed 23 October 2024).

³ Australian Government (The Treasury) '*Financial System Inquiry Final Report*' (November 2014) <<https://treasury.gov.au/sites/default/files/2019-03/p2014-FSI-01Final-Report.pdf>> (accessed 30 October 2024) pg. 25.

⁴ Superannuation (Objective) Bill 2023 (Cth) s5(1).

funds to access long-term investment opportunities, and provide quality, value-for-money Member outcomes, is made easier where superannuation funds work to increase scale and spread costs over a larger membership base (although this often involves expenditure on marketing, promotion and Member acquisition and retention strategies).

Due to the subject of this Review, this Report (and particularly this section) will focus on the evolution of regulated industry superannuation funds, and related governance practices enforced by the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**). The SIS Act establishes a framework for the regulation of superannuation funds, including enabling prudential standards which contain governance, financial and risk requirements for RSE licensees to meet.⁵ Under the SIS Act, APRA has the power to make these prudential standards, and issue guidance to support superannuation trustee compliance.

3.1 Industry Superannuation in Modern Australia

Historically, superannuation in Australia, was generally only granted to select individuals who worked in typically senior corporate roles and/ or the public sector. During the mid-1980s, the Australian trade union movement successfully campaigned for the development of ‘award’ superannuation as an industrial right for all working Australians. The agreement reached with the Australian Government, known as the *Prices and Incomes Accord*, greatly expanded superannuation coverage in Australia and industry-based superannuation funds were established to govern and manage ‘award’ super.

In 1992, the introduction of the Superannuation Guarantee (**SG**) once again transformed the superannuation industry in Australia by requiring that employers make a mandatory contribution into a superannuation fund on their employee’s behalf.⁶ In 2005, employees became able to choose their superannuation fund for SG contributions. Subsequent reforms to the superannuation system in Australia were undertaken and by 2013 APRA’s prudential framework for superannuation was established.⁷

Several types of superannuation funds are available in Australia including (but not limited to) industry, retail, public sector and corporate. Key differences between these fund types, as at June 2024, include (but are not limited to) the following:⁸

⁵ Section 34C of the *Superannuation Industry (Supervision) Act 1993* (Cth) enables APRA to determine a prudential standard relating to a prudential matter that must be complied with by all RSE licensees of registrable superannuation entities.

⁶ Australian Prudential Regulation Authority (2024), ‘[Superannuation in Australia: a timeline](#)’ accessed 30 October 2024.

⁷ Ibid.

⁸ The Association of Superannuation Funds of Australia, ‘Super Statistics’ <<https://www.superannuation.asn.au/resources/super-stats/>> (accessed 23 October 2024).

Table 2: Comparison of superannuation fund types in Australia

Fund type	No. of funds ⁹	Membership	Profit share	Assets (\$ billion) ⁹	No. of member accounts (million) ⁹
Industry	21	Anyone but traditionally those employed in certain industries	Returned to the fund	1,278	14.2
Retail	63	Anyone	Paid to shareholders	742	6.0
Public sector	29	Government employees	Returned to the fund	309	2.4
Corporate	6	Employees of a specific employer	Returned to members	44	0.2

As evidenced above, the largest superannuation fund type in Australia by both assets and Member accounts are industry superannuation funds. Why industry superannuation funds have had such a successful expansion, since their inception in the mid-1980s, could be due to several factors. Some funds have merged (leading to a significant increase in fund scale), whilst other funds have moved away from singular industries to pursue public offering, becoming available to anyone regardless of where they work or the industry they work in. Other factors may include the default appointment of a fund by many employers, the impact of fund stapling,¹⁰ and/or the more intimate relationship that an industry superannuation fund has with its members by virtue of the governance models available.

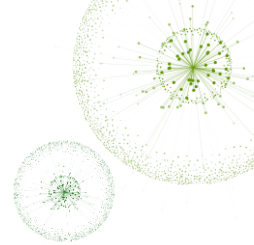
Regardless of the reason for their expansion, the projected growth of industry superannuation funds means they will remain the dominant fund type over the next 20 years.¹¹ This dominance brings increased regulatory supervision and an evolution in the financial, operational and behavioral risk profiles of the largest funds, which will work to further shape the Australian economy. How the evolution of industry superannuation will be navigated amongst an increasingly competitive environment that calls for connection to membership, and adoption of governance and operational better practice, is a developing space. However, it will almost certainly require robust decision-making from boards that not only have the required collective skill set but also a clear and defined purpose for the future.

⁹ Australian Prudential Regulation Authority (2024), "*Quarterly superannuation industry publication October 2024*", accessed 30 October 2024.

¹⁰ *Treasury Laws Amendment (Your Future, Your Super) Act 2021* (Cth).

¹¹ Deloitte, March 2024, '*Dynamics of the Australian Superannuation System: The next 20 years to 2043*'

<<https://www.deloitte.com/au/en/Industries/financial-services/perspectives/dynamics-australian-superannuation-system.html>> (accessed 30 October 2024).



3.2 The Equal Representation Model

Industry superannuation funds in Australia are typically governed by an 'Equal Representation Model'. This model is enabled by section 89 of the SIS Act that provides for the board of a trustee to consist of equal numbers of employer and member representatives. There is no requirement for the boards of superannuation funds to include independent directors although the SIS Act allows for their appointment if desired.¹² The Equal Representation Model has its origins in the very formation of industry superannuation – in the crucible of industrial negotiations and, in Australia, through the *Prices and Incomes Accord* of the 1980s and 1990s - in part, a campaign for 'workers' capital', in part a pragmatic development in wage-superannuation tradeoffs (i.e., foregoing current wages and consumption for future consumption). With this genesis, shared goals between industry and unions are found in the articles of associations and working arrangements of industry superannuation funds. This is why union representatives and employer representatives alike argue that the notion of 'members best interests' lies at the heart of their very being as a board member of an industry superannuation fund.

All directors, including the appointed union and employer representatives, must discharge their duties in the interests of the fund membership, as a whole, above any other considerations and ahead of the interests of any other party. This concept, although simple in theory, when strictly viewed against corporate governance principles, presents a potential for conflicts of interest (explored later in this Report).

The utility of the Equal Representation Model will not be canvassed in detail in this Report. It is worth noting that the Australian government has twice introduced legislation into Parliament to require that for all APRA regulated superannuation funds, one third of board directors must be independent and that the board chair must be independent.¹³ A key driver of these legislative proposals has been to address concerns about the governance, accountability and transparency of representative board and the potential for conflicts of interest to arise.

It is worth noting that Commissioner Hayne in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry examined the Equal Representation Model but did not make any findings relating to the board structure of superannuation funds. Although the lack of findings should not be interpreted as acceptance or support for the Equal Representation Model, Commissioner Hayne did state:¹⁴

¹² *Superannuation Industry (Supervision) Act 1993* (Cth) s89(2).

¹³ Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017 (Cth) lapsed when the Prime Minister, in April 2019, called a federal election and is not proceeding; Superannuation Legislation Amendment (Trustee Governance) Bill 2015 (Cth) lapsed when Parliament prorogued in April 2016 and is not proceeding.

¹⁴ Commonwealth, Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, *Final Report* (2019) vol 1, pg. 244-245.



“I do not consider that these matters are best dealt with by prescriptive rules about board numbers or composition or prescriptive rules about nomination or selection processes. Rules of that kind have sometimes sought to use the notion of ‘independence’ as the relevant criterion. But rules prescribing board numbers or composition or prescribing particular forms of nomination or selection processes distract attention from the basic requirement of ensuring that the board is, as far as possible, constituted, at all times, by directors who, together, will form a skilled and efficient board.”

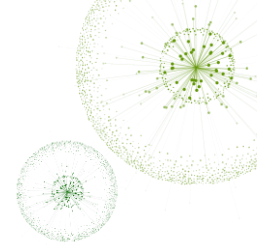
The Royal Commission reiterated the need for boards to have the right mix of skills and experience and for appointed directors to have the appropriate integrity and fitness to oversee fund operations and act in members’ best financial interests. The Equal Representation Model does not technically act as a barrier for boards to achieve this director balance however, the nature of the Equal Representation Model has the potential to increase the risk of conflicts of interest arising for individual directors, which Deloitte explore in more detail later in this Report.

Regardless of industry, the role of a board is generally the same: to govern, direct, control and provide strategic direction to an organisation in accordance with constituent documents and/ or legislation.¹⁵ There is no one size fits all when it comes to good board governance and composition, as much depends on matters such as size, people, regulation, scale, complexity of offerings and risk profile.¹⁶ Where the Equal Representation Model exemplifies good board governance is member voice. The Equal Representation Model enables the protection of member interests by bringing the member voice to the board meeting room. The direct access that a board has to a member, under the Equal Representation Model, arguably enables a greater alignment between a superannuation fund’s purpose, strategic objectives and the changing needs and expectations of its members. This alignment may be more difficult to achieve for the board of a listed company where, although the majority of directors are independent in order to protect shareholders, there is potentially less appreciation/ consideration of the nuanced issues that impact, and matter to, customers.

Ultimately the Equal Representation Model, and all forms of board governance, will continue to be scrutinised due to the fundamental role they play and impact they have on the performance, resilience and sustainability of an organisation. This scrutiny is a safeguard to ensure an organisation operates effectively, ethically and in the best interests of its beneficiaries.

¹⁵ Australian Institute of Company Directors (2020), ‘Role of the board’ <<https://www.aicd.com.au/content/dam/aicd/pdf/tools-resources/director-tools/board/role-of-board-director-tool.pdf>> (accessed 30 October 2024) pg. 1.

¹⁶ Ibid, pg. 3.



3.3 The Fit and Proper Requirement

In the Australian financial services industry, regulated entities such as banks, insurance companies and superannuation funds must assess the fitness and propriety of a director before their appointment to a board. These entities must then reassess directors' fitness and propriety annually.¹⁷

The concept of testing fitness and propriety is not unique to financial services, with many industries across Australia now requiring that an individual satisfy a fit and proper test before practicing an occupation and/ or participating in certain business activities.¹⁸

Prudential Standard SPS 520 Fit and Proper (**SPS 520**) was developed to establish minimum requirements for RSE licensees to meet when determining the fitness and propriety of individuals to hold positions of responsibility. The objective of SPS 520 is to ensure that a RSE licensee prudently manages the risk to business operations of having persons acting in responsible person positions that are not fit and proper. Prudential Practice Guide SPG 520 Fit and Proper (**SPG 520**) accompanies SPS 520 to provide additional direction around meeting the fit and proper requirements.

3.3.1 Bringing some objectivity to subjectivity

Before appointing a director to the board of a RSE licensee, the board must determine whether:¹⁹

- (a) It would be prudent to conclude that the individual meets proprietary criteria of competence, character, diligence, experience, honesty, integrity and judgement to perform properly the duties of their position;
- (b) It would be prudent to conclude that the individual meets fitness criteria by possessing education, technical qualifications, knowledge and skills relevant to the duties and responsibilities of an RSE licensee;
- (c) Is not disqualified under the SIS Act from holding the position; and
- (d) Does not have a conflict in performing the duties of a director, or where a conflict exists, it does not create a material risk that the individual will fail to perform properly the role.

Other than (c), these fit and proper criteria outlined in SPS 520 are subjective in nature.²⁰

Although subjective criterion can be a deliberate technique deployed by a regulator to recognise, and enable, bespoke compliance; it can often prove difficult for organisations to consistently approach and

¹⁷ Australian Prudential Regulation Authority (2024) Prudential Standard SPS 520 Fit and Proper, <<https://www.apra.gov.au/sites/default/files/2024-06/Prudential%20Standard%20SPS%20520%20Fit%20and%20Proper%20-%20clean%20-%20June%202024.pdf>>, (accessed on 10 October 2024) cl. 31.

¹⁸ The concept of 'fit and proper' exists in many legislative contexts, such as the *Corporations Act 2001* (Cth), the *Customs Act 1901* (Cth), the *Migration Act 1958* (Cth) and the *Legal Profession Act 2007* (Qld).

¹⁹ Australian Prudential Regulation Authority (2024) Prudential Standard SPS 520 Fit and Proper, <<https://www.apra.gov.au/sites/default/files/2024-06/Prudential%20Standard%20SPS%20520%20Fit%20and%20Proper%20-%20clean%20-%20June%202024.pdf>>, (accessed on 10 October 2024) cl. 19.

²⁰ Ibid, cl. 19(c). The only objective criterion requirement is that a person must not be disqualified under the SIS Act. This clause is not discussed further in this section.



assess the criteria in practice. In the context of the Equal Representation Model, subjective fit and proper criteria is imperative to enable the appointment of directors with different perspectives, experience and backgrounds who may not fit a theoretical rigid set of fit and proper criteria. As outlined above, union representatives are typically responsible for bringing the member voice, among other perspectives, to the boardroom, which is important to adequately align a superannuation fund's purpose and strategic objective with the changing needs and expectations of its members.

The inherent difficulty when objectively defining a fit and proper person, and related concepts such as character, is reflected in Australian case law. In *Australian Broadcasting Tribunal v Bond and Others* [1990] HCA 33 Toohey and Gaudron JJ outlined that:²¹

The expression "fit and proper person", standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

In the same case, Mason CJ went on to explain that:

The question whether a person is fit and proper is one of value judgment. In that process the seriousness or otherwise of particular conduct is a matter for evaluation by the decision maker. So too is the weight, if any, to be given to matters favouring the person whose fitness and propriety are under consideration.

This case, and the positions articulated by the Court, are often cited in other Australian case law that grapple to determine the meaning of a fit and proper person across a variety of industries and regulations.²²

Although the question of fit and proper may be one that requires a subjective value judgement based on context, activities and required outcomes, it is important to recognise that an objective lens was required to clearly and consistently determine individual fitness and propriety for the purposes of

²¹ *Australian Broadcasting Tribunal v Bond* [1990] HCA 33 paragraph 36.

²² This case was recently considered in the *Commissioner for Fair Trading v Aboukalam* [2024] NSWCATAP 205 (16 October 2024).



this Review.²³ The objective lens that was applied to the subjective criteria throughout this Review is explained in more detail below.

Propriety criteria: Possesses the competence, character, diligence, experience, honesty, integrity and judgement to perform properly the board director position²⁴

The first criteria in SPS 520 to determine fit and proper is whether it would be prudent for a RSE licensee to conclude that the person possesses the competence, character, diligence, experience, honesty, integrity and judgment to perform properly the duties of the responsible person position.²⁵

SPG 520 explains that to assess a person's character, competence and experience relative to the duties involved, a RSE licensee should consider whether the person:²⁶

- Possesses the necessary skills, knowledge, expertise, diligence and soundness of judgement to undertake and fulfil the particular duties and responsibilities of the role in question; and
- Has demonstrated the appropriate competence and integrity in fulfilling occupational, managerial or professional responsibilities previously and/ or in the conduct of their current duties;
- Has demonstrated a lack of willingness to comply with legal obligations, regulatory requirements or professional standards, or been obstructive, misleading or untruthful in dealing with regulatory bodies or a court;
- Has breached a fiduciary obligation;
- Has perpetrated or participated in negligent, deceitful or otherwise discreditable business or professional practices;
- Has been reprimanded, disqualified or removed, by a professional or regulatory body in relation to matters relating to the person's honesty, integrity or business conduct;
- Has seriously or persistently failed to manage personal debts or financial affairs satisfactorily in circumstances where such failure caused loss to others;
- Has been substantially involved in the management of a business or company which has failed where that failure has been occasioned in part by deficiencies in that management;
- Is of bad repute in any business or financial community or any market; or
- Was the subject of civil or criminal proceedings or enforcement action, in relation to the management of an entity, or commercial or professional activities, which were determined adversely to the person (including by the person consenting to an order or direction, or giving

²³ Australian Prudential Regulation Authority (2024) Prudential Standard SPS 520 Fit and Proper, <<https://www.apra.gov.au/sites/default/files/2024-06/Prudential%20Standard%20SPS%20520%20Fit%20and%20Proper%20-%20clean%20-%20June%202024.pdf>>, (accessed on 10 October 2024) cl. 19.

²⁴ Ibid, cl. 19(a).

²⁵ Ibid.

²⁶ Australian Prudential Regulation Authority (2024) Prudential Practice Guide SPG 520 Fit and Proper, <<https://www.apra.gov.au/sites/default/files/2024-06/Prudential%20Practice%20Guide%20SPG%20520%20Fit%20and%20Proper%20-%20clean%20June%202024.pdf>>, (accessed 10 October 2024) cl. 15.



an undertaking, not to engage in unlawful or improper conduct) and which reflected adversely on the person's competence, diligence, judgement, honesty or integrity.

SPG 520 notes that each director is not expected to possess all the required competencies for a board, if other directors have those competencies or if they are obtained from third parties where the board does not unquestionably rely on their advice.²⁷

SPG 520 also notes that an initial assessment of fitness and propriety is likely to include at least Australian criminal record checks, as well as evidence of material qualifications.²⁸

Competence, diligence, experience and judgement

To approach competency for a board, organisations typically deploy a skills assessment to identify the skills and experience of individual board members, as well as the collective skills and experience of the board as a whole. The assessment is designed to recognise any skill gaps that may need to be filled by future nominations, through additional training for existing directors and/ or supplemented by specialist third party advisors. The use of a skills assessment in this way can be an important recognition that an individual director does not need to be skilled in everything required by a board, but rather that the purpose of their appointment is to make a contribution that reflects their unique experience and insights. To focus on contribution in this context recognises that competency is not only about qualifications but also about the practical experience and perspectives that an individual can bring to a board to aid robust and informed discussion and decision-making.

To determine the concept of competence in this context, it is important to consider: Does the individual fill a gap in the board's skills and capabilities? If not, what will the individual contribute to the board i.e., what experience and insights will the individual bring to board discussion and decision-making? To test competency in this way acknowledges there is no 'one size fits all' approach to assessing the fitness of individual directors, enabling consideration of an individual's unique diligence, experience and judgement practices.

Character, honesty and integrity

To appropriately test if a person possesses the character to properly perform the duties of a responsible person, an assessment of that individual's reputation through primary source evidence should be conducted. Organisations, including those outside a superannuation context, typically perform a variety of routine background checks including (but not limited to) criminal history, bankruptcy, personal/ professional references and social media profile scans. Results of these checks provide the basis of the character assessment and enable consideration of an individual's honesty and integrity.

²⁷ Ibid, cl. 14.

²⁸ Ibid, cl. 32.

It is important to recognise that what comprises a good result and ultimately 'good character' should be assessed on a scale. This is because the presence of a result, or 'negative' finding, during a routine background check may not always result in an immediate failure of the fit and proper test but rather should initiate a deeper analysis of the facts and surrounding context (before a determination is made).

To determine the concept of character when there is a 'negative' finding in place, it is important to consider: Is there additional information available and does it reflect a person that can be entrusted with money and charged with the responsibility to make an informed decision for the members? Does the information available impact an individual's ability to properly perform the duties of their position?

Fitness criteria: Holds the relevant education, technical qualifications, knowledge and skills²⁹

The second criteria in SPS 520 to be applied to determine fit and proper is whether it would be prudent for an RSE licensee to conclude that the person possesses the education or technical qualifications, knowledge and skills relevant to the duties and responsibilities of an RSE licensee.³⁰

SPG 520 does not provide guidance for how to determine the relevancy of education or technical qualifications, knowledge and skills. The fitness test should therefore be pragmatically approached with an identification of role requirements followed by a comparison to the education, qualification, knowledge and/ or skills of the specific individual. Importantly, SPS 520 does not classify any skill set or education as more advantageous than another i.e., it does not identify that a tertiary education is more or less important than a technical qualification or practical skill.

It is expected the test for fitness would include a consideration of previous experience, including the success (or otherwise) of the previous organisation where the individual was a director and/ or employed in a leadership position. It is important to recognise however, that although the success (or otherwise) of the previous organisation would be considered, it would not always indicate that an individual has, or lacks, the requisite experience or knowledge required for a board position. To appropriately analyse the success or otherwise of an entity or board at a particular point in time, there would need to be a careful examination of all surrounding context and circumstances including (but not limited to) market conditions as well as considering the role and performance of an individual within the organisation.

Ultimately, to test the fitness of an individual, a thorough review must be conducted of their education and career to date, including both the successes and failures experienced. As noted above, the

²⁹ Australian Prudential Regulation Authority (2024) Prudential Standard SPS 520 Fit and Proper, <<https://www.apra.gov.au/sites/default/files/2024-06/Prudential%20Standard%20SPS%20520%20Fit%20and%20Proper%20-%20clean%20-%20June%202024.pdf>> (accessed on 10 October 2024) cl. 19(b).

³⁰ Ibid.



presence of a failure in an individual's history will not always be indicative of ability. Failure may result in a unique experience and/ or understanding that could be an asset to a new role and organisation.

Disqualification criteria: Is not disqualified under the SIS Act from holding the position³¹

The third criteria in SPS 520 is an objective one that relates to whether an individual has been disqualified under the SIS Act from holding a responsible person position. This is an objective criterion to apply that does not require any interpretation in order to undertake a fit and proper assessment.

Conflicts criteria: Does not have a conflict in performing the duties, or where a conflict exists, it does not create a material risk that the individual will fail to perform properly the director role³²

The fourth and final criteria in SPS 520, to determine fit and proper, is whether the person either has no conflict in performing the duties of the responsible person or, if a conflict exists, that it would be prudent for an RSE licensee to conclude that the conflict will not create a material risk that the person will fail to perform properly the duties of the position.³³

SPS 520 refers to Prudential Standard SPS 521 Conflicts of Interest (**SPS 521**) which establishes requirements for the identification, avoidance and management of conflicts of duty and interest by an RSE licensee. SPS 521 identifies that a relevant interest is one that might reasonably be considered to have the potential to have a significant impact on the capacity of the RSE licensee, the associate of the RSE licensee or the responsible person with the relevant duty or holding the relevant interest, to act in a manner that is consistent with the best interests of beneficiaries.³⁴

Prudential Practice Guide SPG 521 Conflicts of Interest (**SPG 521**) accompanies SPS 521 to provide practical guidance around meeting the conflicts of interest requirements.

As noted above, under the Equal Representation Model, appointed representatives must discharge their duties in the interests of the members as a whole, rather than in the interests of the party which appointed them, which can present a potential for conflict. This is specifically noted in SPG 521:³⁵

A director of an RSE licensee will often be nominated or appointed by, and may be under an expectation that they will represent the interests of, a nominating body or appointer. APRA considers that this relationship would ordinarily give rise to the director having an obligation to the nominating body or appointer. APRA expects that an RSE licensee would implement processes to ensure that,

³¹ Ibid, cl. 19(c).

³² Ibid cl. 19(d).

³³ Ibid.

³⁴ Australian Prudential Regulation Authority (2013) Prudential Practice Guide SPG 521 – Conflicts of Interest, <https://www.apra.gov.au/sites/default/files/prudential-practice-guide-spg-521-conflicts-of-interest-july-2013_0.pdf>, (accessed 10 October 2024).

³⁵ Ibid, cl. 23.

when appointed, such directors are aware of the strong possibility of a conflict between the interests of beneficiaries and the interests of the nominating or appointing body, as well as the need to disclose relevant duties and interests and avoid, if not manage, any resulting actual or perceived conflicts.

Reference in SPG 521, of the actual or perceived conflict that arises in the Equal Representation Model, is a recognition from the regulator that a conflict naturally arises (without fault of the RSE licensee, individual directors or their nominating bodies). It acknowledges that the presence of the conflict therefore is not an adverse finding if there are processes in place to ensure that the conflict is appropriately communicated and managed by an RSE licensee in practice.

3.3.2 Other Fit and Proper approaches

It is important to recognise that other Australian, and international, regulators, commissions and institutes require a determination of 'fit and proper' for individuals.

Until February 2020, ASIC deployed a test of good fame and character when assessing an application for a new or varied Australian Financial Services Licence (**AFSL**). This test was revised to the higher standard of a 'fit and proper' determination,³⁶ to now require disclosure of (amongst other matters) a previous history of banning or disqualification under various legislative instruments; whether the individual has ever been insolvent; and, whether the individual has ever been linked to a refusal or failure to give effect to a determination made by the Australian Financial Complaints Authority.³⁷ Similar to the test deployed by APRA, administration of this test typically occurs by way of a national criminal history check and a bankruptcy check. However, unlike APRA, ASIC also require a completed 'Statement of Personal Information' questionnaire which is ultimately an attestation about activities that have occurred within the last 10 years in Australia and/ or overseas.³⁸

The objective fit and proper determination requirements deployed by ASIC, are similar to those required by the Fair Work Commission (**FWC**) in the context of issuing a Fair Work Entry Permit (**FWEP**). In deciding whether an official is a fit and proper person, the FWC take into account permit qualification matters such as whether the official has received appropriate training about the rights and responsibilities of a permit holder, and whether the official has ever been convicted of an offence against an industrial law.³⁹ Although the FWC may also consider any other matters that they think are relevant to the permit application,⁴⁰ subjective issues of competence and character are not prescribed.

³⁶ *Corporations Act 2001* (Cth) s913BA.

³⁷ *Ibid*, s913BB.

³⁸ Australian Securities & Investments Commission 'Australian financial services (AFS) licence application: Template Statement of Personal Information for fit and proper people' <<https://download.asic.gov.au/media/5551678/afs-licence-application-template-statement-of-personal-information-published-1-april-2020-20200409.docx>>.

³⁹ *Fair Work Act 2009* (Cth) s513.

⁴⁰ *Ibid*, s513(g).

The absence of subjective criteria in the fit and proper determination processes of other regulators and commissions has not been called out to criticise the process in place in a superannuation context, but rather illustrate (for comparative purposes) how the test may be approached in other ways.

International perspectives

To aid, and conclude, consideration of the different ways that concepts of fit and proper are approached, the Review refers to the guide to fit and proper assessments released by the European Central Bank (**ECB**).⁴¹ The guide, released in December 2021, assesses the fitness and propriety of members against five criteria: (1) experience (2) reputation (3) conflicts of interest and independence of mind (4) time commitment and (5) collective suitability.⁴²

To assess experience, practical experience and theoretical knowledge are separated to encompass both theoretical knowledge obtained through formal education and training, and practical experience attained in previous roles.⁴³ Ultimately, the more complex a role, the greater experience required. The guide identifies that individuals are presumed to have sufficient experience unless there is an indication they do not, or if there is specific theoretical and/ or practical experience required. Where this is the case, a detailed assessment is required and justification may be needed as to why the experience is missing, which may include production of a training plan.⁴⁴ Practical experience is measured by virtue of relevance, length and level of managerial responsibilities.⁴⁵ The guide mandates basic theoretical banking knowledge (noting that the guidance is intended for banks but is equally applicable to other financial services organisations) including (but not limited to) risk management, strategic planning and banking and financial markets.⁴⁶ It also identifies that, for non-executive directors, at least three years of recent relevant practical experience at a high-level managerial position (including theoretical knowledge in banking) is required.⁴⁷

To measure reputation, the guide notes that the principle of proportionality cannot be applied as a person either has a good or a bad reputation.⁴⁸ However, the guide recognises where an individual is the subject of criminal, administrative or civil proceedings, that the materiality of the circumstances will be considered.⁴⁹ Reputation assessment is to be conducted on a case-by-case basis and may include consideration of personal involvement, cumulative proceedings, conduct since the relevant fact or proceedings, transparency and insight, and length of time since the offence. The guide recognises that if five years have passed since a finding or decision that did not include a custodial

⁴¹ European Central Bank, Guide to fit and proper assessments (December 2021)
<https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.fit_and_proper_guide_update202112~d66f230eca.en.pdf>.

⁴² Ibid, pg. 9.

⁴³ Ibid.

⁴⁴ Ibid, pg. 11-13.

⁴⁵ Ibid, pg. 12.

⁴⁶ Ibid, pg. 11.

⁴⁷ Ibid, pg. 12.

⁴⁸ Ibid, pg. 14.

⁴⁹ Ibid.

sentence, and there are no other facts to cast a material doubt on repute, then in principle it should be considered there are no material doubts regarding reputation (unless there are aggravating circumstances present).⁵⁰

To consider conflicts of interest, the guide notes information should be provided on all actual, potential or perceived conflicts of interests and that there should be policies in place to prevent, mitigate and manage the conflicts.⁵¹ The guide specifically identifies that having a conflict of interest does not mean an appointee will not be suitable (noting only where the conflict poses a material risk that cannot be mitigated, managed or prevented would that occur).⁵²

To measure the time commitment criteria, the guide outlines that an individual must be able to commit sufficient time to perform the role which is assessed on a case-by-case basis, applying the principle of proportionality.⁵³ Potential considerations here include the number of other directorships held and the size and scale of required activities.⁵⁴

The final criteria identified in the guide is a consideration of the collective suitability of the management body.⁵⁵ Organisations are required, when assessing an individual for fitness and propriety, to also consider an assessment of the collective suitability of the management body to enable effective discussion and challenge.⁵⁶

3.4 The Best Financial Interests Duty

The *Treasury Laws Amendment (Your Future, Your Super) Act 2021 (Cth) (YFYS Act)* came into effect from 1 July 2021. A key component of these reforms was to amend specific sections of the SIS Act to require that trustees of regulated superannuation funds perform their duties, and exercise their powers, in the best *financial* interests of members (rather than simply the best interests of members).⁵⁷ Other sections of the SIS Act were also amended as part of these reforms to reverse the evidentiary burden of proof, requiring trustees of regulated superannuation funds to evidence and maintain appropriate records demonstrating they have met their duty to act in the best financial interests of members.⁵⁸ The ultimate purpose of the amendments was to increase accountability of trustees when executing their fiduciary duties in operating a superannuation entity, particularly around decision-making related to expenditure and investments.

Focus on, and the introduction of requirements related to, expenditure management, had commenced in the years preceding the *Your Future, Your Super* reforms. In December 2018, APRA

⁵⁰ Ibid, pg. 19.

⁵¹ Ibid, pg. 23.

⁵² Ibid, pg. 23-24.

⁵³ Ibid, pg. 30.

⁵⁴ Ibid.

⁵⁵ Ibid, pg. 40.

⁵⁶ Ibid.

⁵⁷ Superannuation Industry (Supervision) Act 1993 (Cth) ss 52(2)(c) and 52A(2)(c).

⁵⁸ Ibid, s220A.



introduced Prudential Standard SPS 515 Strategic Planning and Member Outcomes (**SPS 515**), and two related prudential practice guides,⁵⁹ which came into effect from 1 January 2020. This prudential framework established new requirements for superannuation funds to regularly evaluate whether performance achieved the superannuation fund's approved strategic objectives,⁶⁰ including mandating a review of the related business planning and expenditure management practices in place. The framework also introduced a requirement for an annual member outcomes assessment whereby superannuation trustees were required to annually determine, for each MySuper and choice product, whether the financial interests of members holding these superannuation products were being promoted.

At the same time the prudential framework was introduced, the Australian Government Productivity Commission released its report 'Superannuation: Assessing Efficiency and Competitiveness' that found:

"...it has become evident that funds do not always act in the best interests of their members. It would appear that this reflects not only trustee misconduct but a lack of clarity around what is expected of trustees under the best interests duty in legislation — as has become apparent in the evidence emerging through the Royal Commission."⁶¹

This observation and finding resulted in the Productivity Commission recommending that *"the Australian Government should pursue a clearer articulation of what it means for a trustee to act in members' best interests under the Superannuation Industry (Supervision) Act 1993 (Cth)."*⁶²

The implementation of SPS 515 in January 2020 required RSE licensees to think deeply about their strategic objectives, and how they differed from other offerings in the market. It also required RSE licensees to ensure that decisions around fund expenditure were for the sound and prudent management of its business operations and consistent with members' best interests (noting this was later revised to financial interests). This ultimately resulted in heightened regulator focus on expenditure, with greater scrutiny placed on the purpose of expenditure and the related metrics used to assess the success of expenditure decisions.

⁵⁹ Australian Prudential Regulation Authority (2019) Prudential Practice Guide SPG 515 – Strategic and Business Planning, <https://www.apra.gov.au/sites/default/files/prudential_practice_guide_spg_515_strategic_and_business_planning_august_2019.pdf>, (accessed 10 October 2024); Australian Prudential Regulation Authority (2018) Prudential Practice Guide SPG 516 – Outcomes Assessment, <https://www.apra.gov.au/sites/default/files/spg_516_outcomes_assessment_december_2018_v3.pdf>, (accessed 10 October 2024).

⁶⁰ Australian Prudential Regulation Authority (2019) Prudential Practice Guide SPG 515 – Strategic and Business Planning, <https://www.apra.gov.au/sites/default/files/prudential_practice_guide_spg_515_strategic_and_business_planning_august_2019.pdf>, (accessed 10 October 2024) cl. 4 (according to SPS 515, the board must approve strategic objectives for an RSE licensee's business operations that support achieving the outcomes the RSE licensee seeks for beneficiaries and the sound and prudent management of the RSE licensee's business operations).

⁶¹ Productivity Commission Inquiry Report, 'Superannuation: Assessing Efficiency and Competitiveness' (No. 91, 21 Document 2018), <<https://www.pc.gov.au/inquiries/completed/superannuation/assessment/report/superannuation-assessment-overview.pdf>> (accessed 30 October 2024) pg. 43.

⁶² Ibid, pg. 73.

This heightened focus increased again when the *Your Future, Your Super* reform came into effect in 2021, and further again when APRA enhanced SPS 515 in July 2024 to ensure member interests are 'front-and-centre' for strategic and business planning, and financial resource management.⁶³ The enhanced SPS 515 requirements, which take effect from 1 July 2025, see APRA set design principles for a robust expenditure management framework and collect, analyse and publish detailed expenditure data at a fund level to ensure spending aligns with the best financial interests of members.⁶⁴

3.4.1 Minimum standard

The legislation

At a minimum, post 1 July 2021, the YFYS Act requires that trustees of regulated superannuation funds perform their duties and exercise their powers in the best financial interests of members, reversing the evidential burden of proof (noting the reverse onus does apply to the best financial interests duty (**BFID**) requirements prescribed by regulations).⁶⁵

The YFYS Act established that regulations may set out additional requirements on trustees of regulated superannuation funds and failure to comply with the additional requirements would be a contravention of the BFID.⁶⁶

As well as the existing arrangements, the YFYS Act also identified that a contravention by a trustee of a regulated superannuation fund of a record-keeping obligation, specified in regulations, may result in a strict liability offence.⁶⁷

Ultimately the amendments to the SIS Act were designed to hold trustees of superannuation funds accountable for how they spend members' money to operate a fund.⁶⁸ Section 52 of the SIS Act now establishes several covenants which include a requirement to perform the trustee's duties and exercise the trustee's powers in the best financial interests of the members.⁶⁹

The SIS Act defines evidential burden to mean '*...the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist*'.⁷⁰

⁶³ Australian Prudential Regulation Authority (July 2024), '*APRA strengthens core prudential standard to support outcomes for members in super 2024*', <<https://www.apra.gov.au/news-and-publications/apra-strengthens-core-prudential-standard-to-support-outcomes-for-members>> (accessed 30 October 2024).

⁶⁴ Ibid.

⁶⁵ *Treasury Laws Amendment (Your Future, Your Super) Act 2021* (Cth) Sch. 3.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Explanatory Memorandum, *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* (Cth) [3.20].

⁶⁹ *Superannuation Industry (Supervision) Act 1993* (Cth) s52(2)(c).

⁷⁰ *Superannuation Industry (Supervision) Act 1993* (Cth) s10(1).



The Explanatory Memorandum

The explanatory memorandum to the *Treasury Laws Amendment (Your Future, Your Super) Bill 2021* (the **Explanatory Memorandum**) states that the purpose of the Your Future Your Super amendments was to *'...increase the accountability of superannuation trustees in relation to the execution of their fiduciary duties in relation to the many actions trustees take in operating a superannuation entity: which include incurring day-to-day essential operational expenditure and investing the beneficiaries' money, to less frequent strategic decisions and discretionary expenditures'*.⁷¹

The new BFID clarified the best interests duty by eliminating *'...the possibility that trustees and directors of corporate trustees can act in a manner that they judge improves the non-financial interests of the beneficiaries but at the expense of their financial interests...'*⁷²

Identifying a financial benefit is a threshold consideration for trustees that should consider the appropriateness of the proposed expenditure.⁷³ It is ultimately a question for the trustees as to how any action will yield financial benefit,⁷⁴ but note the decision will depend on all the surrounding circumstances and is not subject to any materiality threshold.⁷⁵ It is important to recognise, as the Explanatory Memorandum states, that actions taken by trustees will differ in *'...quantum, complexity, regulatory and duration'*.⁷⁶ The scale and complexity of the expenditure action should be reflected in the supporting analysis e.g., significant expenditure should be supported by robust cost benefit analysis and quantifiable metrics.⁷⁷

If there is expenditure, the trustee needs to have robust evidence in place that supports their decision (noting for discretionary or non-essential expenditure, a greater scrutiny will be placed on the basis for the expenditure).⁷⁸ Expenditure unsupported by identifiable financial benefits, articulated in a clear proposal, are unlikely to satisfy the requirements of the BFID.⁷⁹

As noted in the legislation, the trustee of a regulated superannuation fund now has the evidential burden of proof to present evidence that supports a contention they performed their duties and exercised their powers in the best financial interests of members.⁸⁰ This reversal was designed to emphasise the need for trustees to have strong systems and practices in place (including record keeping) to ensure they can refer to evidence, such as quantifiable metrics, to support the contention that performance of duties/ powers were in the best financial interests of members.⁸¹

⁷¹ Explanatory Memorandum, Treasury Laws Amendment (Your Future, Your Super) Bill 2021 (Cth) [3.7].

⁷² Ibid, [3.8].

⁷³ Ibid, [3.31-3.32].

⁷⁴ Ibid, [3.30].

⁷⁵ Ibid, [3.33].

⁷⁶ Ibid, [3.35].

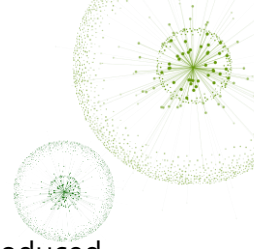
⁷⁷ Ibid.

⁷⁸ Ibid, [3.31-3.34].

⁷⁹ Ibid, [3.36].

⁸⁰ Ibid, [3.58].

⁸¹ Ibid, [3.60].



The prudential guidance

The minimum standard contained in the SIS Act is supported by SPS 515 which, although introduced prior to the introduction of BFID, includes expectations on trustees regarding expenditure management. Specifically, a RSE licensee must:

1. Ensure that its expenditure decisions are for the purposes of the sound and prudent management of its business operations and consistent with the best interests of beneficiaries;⁸²
2. Be able to demonstrate, when making decisions relating to its business operations that will result in significant expenditure:⁸³
 - a. The purpose of the expenditure, including how the expenditure will contribute to the RSE licensee meeting its strategic objectives;
 - b. How it will assess whether expenditure is achieving its intended purpose, including any metrics used;
 - c. The circumstances that would trigger a review of the expenditure decision, including whether any further related expenditure should take place; and
 - d. How the expenditure will be funded and, where relevant, how the use of reserves as the source of funding for the expenditure accords with the strategy formulated pursuant to section 52(2)(i) of the SIS Act.

For the purposes of SPS 515, 'significant' relates to the size or extraordinary nature of the expenditure.⁸⁴

3.4.2 Better practice

All funds are unique in size, business mix and complexity which will impact the various approaches adopted to meet the BFID.

To aid consideration of the BFID more generally, outlined below are examples of what 'good' looks like when it comes to:

- The preparation of a business case or proposal to approve the expenditure; and
- Oversight/ monitoring expectations of the approved expenditure.

These examples are based on Deloitte's interpretation of the requirements and wider industry experience, as well as the recommendations set out in the Australian Institute of Superannuation Trustees' Framework for Best Financial Interest Duty (**AIST Framework**).⁸⁵

⁸² Australian Prudential Regulation Authority (2019) Prudential Standard SPS 515 – Strategic Planning and Member Outcomes, <<https://www.legislation.gov.au/F2019L01577/latest/text>> (accessed 10 October 2024) cl. 18.

⁸³ Ibid, cl.19.

⁸⁴ Ibid, cl. 20.

⁸⁵ Australian Institute of Superannuation Trustees et al. (2021) 'Framework for Best Financial Interest Duty' pg. 12.



Table 3: Better practice proposal and oversight/ monitoring practices

Proposal expectations	Oversight and monitoring expectations
<ul style="list-style-type: none"> • Strategic case and purpose, including context as to why the expenditure is required, clear link to fund strategic objectives and member financial outcomes (e.g., lower costs, fees, improved services) in addition to business outcomes (growth in members and or funds under management). • Cost benefit analysis including clear metrics quantifying financial and/ or scale impacts. • A statement as to whether it is in the best financial interest of members given the costs and benefits. • Associated assumptions underpinning the benefit calculations with accompanying experience analysis, evidence and sources clearly documented. • Key risks to the achievement of the financial and non-financial benefits, including sensitivity analysis. • Timetable and key milestones. • Expectations during and post the specific expenditure being implemented, including how success will be monitored. • Administrative elements, including business owner and relevant stakeholder sign off, executive sponsor, board approval and date. • Identified conflicts and how these were managed. • Clear documentation to meet the reverse burden of proof and record keeping requirements. 	<ul style="list-style-type: none"> • Clear, available metrics from proposal to measure ongoing effectiveness of the expenditure, with direct relation to member outcomes. • Circumstances that would trigger a review of the expenditure and define the remedial actions, including cancellation of the expenditure. • Regular monitoring and reporting on outcomes against metrics from the proposal and intended purpose. • Where performance against metrics does not go as planned, assessment of any related reasons and whether they need to be continued, modified or even ceased. • Reporting and monitoring of key risks. • Periodic monitoring whether assumptions for future initiatives should be reset having regard to experience.

It is important to recognise in the context of BFID better practice (and governance more generally) that APRA, under the Supervision, Risk and Intensity (**SRI**) Model, requires annual risk assessments to be conducted for all APRA regulated entities (in a superannuation context, these assessments are

completed for the RSE licensees).⁸⁶ The process deployed by APRA categorises entities into one of four tiers based on the potential impact that the entity's failure/ imprudent behaviour could have on the financial stability and economic activity of Australia.⁸⁷ Entities that could have a large systemic impact (tier 1), or systemic impact (tier 2), are subject to a more "...detailed assessment of certain sub-categories to provide additional industry information and a deeper, more robust assessment of the core categories of risk".⁸⁸ Categories of risk that are subject to the annual assessment include governance and risk management, including the governance structures and processes in place to inform decisions and actions by the board and senior management.⁸⁹ This assessment area reiterates the importance of appropriate oversight and monitoring, and adequate record keeping practices, which are both requirements enforced by the BFID.

3.4.3 Hard to measure

In October 2021, APRA released findings from its superannuation thematic reviews that related to strategic and business planning, fund expenditure and unlisted asset valuation practices.⁹⁰ In relation to RSE licensee expenditure, APRA found (amongst other matters) that many RSE licensees had failed to rigorously measure and assess anticipated benefits to members of expenditure made on marketing campaigns and related activities.⁹¹ Marketing was a collective term used by APRA to refer to advertising, sponsorship and promotions.⁹² APRA noted there was a general absence of appropriate metrics,⁹³ and identified there were RSE licensees whose decisions regarding marketing expenditure may not be consistent with the Sole Purpose Test and duty to act in the best interests of members (noting this review was undertaken prior to the introduction of the Your Future, Your Super reforms).⁹⁴

In their findings, APRA identified multiple examples where RSE licensees entered sponsorship, or sponsorship renewals, but failed to link (amongst other actions) the metrics, value to the fund and ultimately how the spend translated into improved outcomes for members.⁹⁵

An inherent challenge encountered by organisations in meeting the BFID is linking expenditure to an improved outcome for members. There will be times where this causation is easier to prove, such as when an investment has been made and a return of the expected amount has been obtained.

⁸⁶ Australian Prudential Regulation Authority (2020) Guide: Supervision Risk and Intensity Model, <<https://www.apra.gov.au/sites/default/files/%5Bdate%3Acustom%3AY%5D-%5Bdate%3Am%5D/Supervision%20Risk%20and%20Intensity%20Model%20Guide.pdf>> (accessed 30 October 2024) pg. 6.

⁸⁷ Ibid, pg. 8.

⁸⁸ Ibid, pg. 10.

⁸⁹ Ibid, pg. 13.

⁹⁰ Australian Prudential Regulation Authority (2021) Information Paper: Findings from APRA's superannuation thematic reviews <https://www.apra.gov.au/sites/default/files/2021-10/Findings%20from%20APRA%E2%80%99s%20superannuation%20thematic%20reviews_1.pdf> (accessed 23 October 2024).

⁹¹ Ibid, pg. 6.

⁹² Ibid, pg. 9.

⁹³ Ibid, pg. 6.

⁹⁴ Ibid, pg. 9.

⁹⁵ Ibid, pg. 6.



However, it becomes more difficult to assess investment in areas such as marketing and direct advertising where there is not always an obvious and immediate direct return on investment.

Above-the-line marketing expenditure, designed to reach a broad audience such as television, magazine and billboard advertisements, have always been difficult to link with a return on investment. Although there are ways the expenditure can be tracked, such as reconciling the cost of a billboard in a particular suburb to an increase in members from the same suburb, it will always be a more tenuous link than below-the-line marketing activities that are highly targeted, focused and which often result in direct engagement with an individual customer. This direct and personal communication typically results in the collection of significant data that evidences a return on an investment (or otherwise) for an organisation.

Many superannuation funds invest in above-the-line advertising, although it cannot always be directly attributed to a sale (or a member outcome), to build and maintain brand recognition, positioning and reputation.⁹⁶ To sell a product, or raise membership, any organisation (regardless of industry) must create an awareness of its brand that resonates with a potential customer (or member). Awareness activities may look and feel different for each organisation but are ultimately conducted for the same eventual outcome: attachment and trust at an individual level, and growth at an organisational level.

Industry partnerships

Entering into industry partnerships is an important mechanism, through which industry superannuation funds achieve brand awareness, retain members and ultimately grow membership. These partnership agreements may differ, but typically contain above-the-line and below-the-line marketing requirements, to both enhance brand positioning and obtain direct engagement with current, and potential, members.

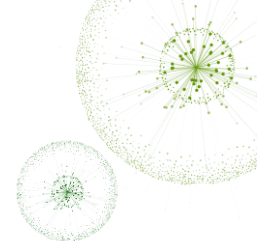
Although the value of industry partnerships may be difficult to measure, there is sensible reasoning that can be applied as to why an agreement, particularly with an organisation that has foundational industry connections, would result in valuable outcomes for an industry superannuation fund. For example, the other party to the partnership may be an industry union that has direct access to both current and potential members of an industry superannuation fund (who rely on the union's guidance as to their financial security and wellbeing). This intimate access would support a proposition that any promotional activities of an industry superannuation fund by the union partner would likely result in fund membership retention and growth.

Despite the difficulty measuring value derived from industry partnerships, industry superannuation funds are still expected (by way of the BFID) to have processes in place that seek to quantify any value

⁹⁶ Australian Prudential Regulatory Authority, 'Annual fund-level superannuation statistics: Superannuation Fund Expenditure' (June 2023) <<https://www.apra.gov.au/sites/default/files/2024-10/20241030%20-%20Annual%20fund-level%20superannuation%20statistics%20-%20expenditure.xlsx>> (accessed 07 November 2024); Australian Government (The Treasury) 'Financial System Inquiry Final Report' (November 2014) <<https://treasury.gov.au/sites/default/files/2019-03/p2014-FSI-01Final-Report.pdf>> (accessed 30 October 2024).

achieved and ultimately determine whether the partnership is in the best financial interests of its members. This ability to quantify the attribution of an industry partnership to achieve member outcomes is still evolving as the BFID regime matures and data collection techniques advance.





4. THE ASK: INDEPENDENT REVIEW

In September 2024 the RSE Licensee, as trustee for Cbus, appointed Deloitte to perform the role of an Independent Reviewer, as required by additional license conditions imposed by APRA that came into force on 14 August 2024.

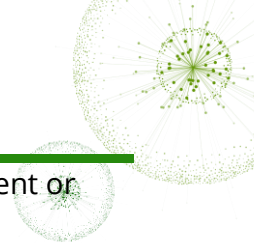
At a high-level, the additional licence conditions required the RSE Licensee to engage an Independent Third Party to conduct a Review and confirm:

1. Whether the RSE Licensee is, and has been, compliant with the relevant prudential standards and statutory framework concerning fitness and propriety; and
2. How the RSE Licensee was meeting its BFID requirements with regard to its payments to the CFMEU.

Deloitte was specifically asked to conduct a review of the areas outlined below.

Table 4: Review area as per the additional licence conditions

Review area as per the additional licence conditions	
(a)	all of the processes undertaken by the RSE Licensee in assessing whether all of the Directors and officers of the RSE Licensee are fit and proper in compliance with Fit and Proper (F&P);
(b)	the adequacy of the RSE Licensee's policies and procedures in relation to F&P;
(c)	whether, in the opinion of the Independent Third Party, the current Directors and officers of the RSE Licensee: <ol style="list-style-type: none"> (i) were F&P at the time they were last assessed by the RSE Licensee; and (ii) remain F&P in compliance with F&P as at the date of the Review;
(d)	all expenditure decisions of the RSE Licensee connected with the CFMEU that were in effect or being made as at 1 June 2024 (Expenditure Decisions), by reference to BFID, including in relation to: <ol style="list-style-type: none"> (i) the processes undertaken by the RSE Licensee in relation to the making of Expenditure Decisions; (ii) the identified purpose of the Expenditure Decisions, including how the expenditure would contribute to the RSE Licensee meeting its strategic objectives; (iii) what metrics, measures or alternatives (if any) were used to assess whether the expenditure would reasonably achieve its intended purpose and was consistent with BFID; (iv) what oversight arrangements were implemented by the RSE Licensee to monitor implementation of Expenditure Decisions; (v) whether the Expenditure Decisions were made for the sound and prudent management of the RSE Licensee's business operations, including whether the: <ol style="list-style-type: none"> (A) stated benefit of any arrangement or contract was obtained by the RSE Licensee; (B) expenditure achieved its intended purpose;



- (C) goods or services (as the case may be) to be delivered under any arrangement or contract were obtained by the RSE Licensee;
- (D) expenditure provided fair value for beneficiaries of the Construction and Building Unions Superannuation Fund ABN 75 493 363 262; and
- (E) stated metrics, if any, that were set during the RSE Licensee's BFID assessment were met;

(e) the adequacy of the RSE Licensee's policies and procedures in relation to Expenditure Decisions and whether those policies and procedures meet the RSE Licensee's obligations under BFID; and

(f) any other matter reasonably requested by APRA.⁹⁷

4.1 The Approach

Due to the subjectivity and interpretation necessary to apply the relevant requirements and guidance, where possible, Deloitte sought to identify and deploy not only better practice considerations to the Review scope but also the practices that would be fit-for-purpose for an industry superannuation fund of the same size, scale and complexity.

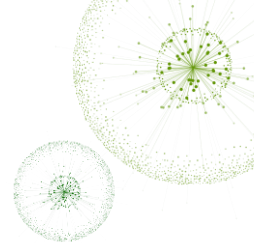
The good governance and business operation principles that guided this Review were ultimately that processes and practices in place must be:

- Transparent to enable credibility;
- Rigorous to produce comprehensive and defensible results; and
- Consistent to ensure a fair and equitable application.

The scope areas developed and deployed by Deloitte were agreed with APRA on 11 October 2024. The scope areas are as follows:

1. Review the design of the fit and proper arrangements in place, to consider if they meet relevant legislative and regulatory requirements;
2. Reperform the 2023 fit and proper assessment of Directors, using the same methodology deployed by the Trustee, to determine if the assessment aligned with internal processes and we came to same conclusion reached by the Trustee;
3. Perform a fit and proper assessment of current and nominated Directors, using a methodology developed by Deloitte, to determine if the Directors remain/ should be considered fit and proper;
4. Review the design of BFID arrangements in place to consider if they meet relevant legislative and regulatory requirements, and have been embedded appropriately across Cbus;
5. Review the purpose of specific expenditure to determine if the related Partnership Proposal's and collateral align with relevant BFID requirements;

⁹⁷ Noting that as at the date of this Report no additional matters had been requested by APRA.



6. Review the defined measures of success to consider if they meet the relevant BFID requirements;
7. Review the process for making Expenditure Decisions to consider if it meets relevant BFID requirements;
8. Review the oversight arrangements in place for specific expenditure decisions to consider if they align to the relevant Partnership Proposal, Partnership Agreement and BFID requirements;
9. Perform an assessment of past expenditure decisions to consider if they were made for the sound and prudent management of the Fund's business operations and achieved the intended purpose.

Refer to **Appendix C** of this Report for further detail of the agreed scope areas and activities.

Section 5 and 6 of this Report addresses findings, observations and recommendations identified for each of the above scope areas.

4.2 The Limitations of this Review

This Review was limited to the scope areas and activities agreed with APRA on 11 October 2024. Deloitte note the following matters:

- **Deloitte has relied on Cbus to provide accurate, complete and relevant documentation.** To execute this Review, Deloitte requested several tranches of disclosure from Cbus related to (amongst other matters) expenditure decisions and fit and proper assessment collateral.⁹⁸ Disclosure requests were based on timeframes specified by APRA in the additional licence conditions imposed on 14 August 2024. As Deloitte have not executed a review of the underlying data, nor sought to independently verify the disclosure received is accurate and complete, Deloitte cannot confirm that the details, documents and data provided by Cbus was exhaustive.
- **Deloitte did not conduct a Board governance review.** The parameters for the Review did not include an assessment, analysis or conclusion as to the effectiveness of the Board and related Board Committees. As such, Deloitte did not consider, or conclude, whether the Board or the Board Committees fulfilled their governance responsibilities.
- **Deloitte was not engaged to conduct a legal review of compliance with the BFID (including the evidentiary burden of proof) or to individually assess whether or not each expenditure decision within the scope of the Review was in the best financial interests of Members.** Deloitte was engaged to assess the governance and processes in place related to the best financial interests duty, particularly whether they are appropriate and adequate to meet the relevant legislative and regulatory obligations.

⁹⁸ For the assessments of fit and proper in scope areas 2 and 3, reliance has been placed on information provided by Cbus as well as publicly available information. Deloitte have not sought to confirm the accuracy of that information.

- **This Review, including its findings, observations and recommendations related to the BFID, have been developed based on Deloitte’s interpretation of the relevant legislative requirements.** There has been limited guidance published by the Australian Government, or APRA (apart from the Explanatory Memorandum discussed above), as to the types of evidence or quantitative metrics required to meet the BFID. There is limited guidance available related to the BFID requirements, including how BFID may be approached in a scalable way for organisations of different sizes and complexity.



5. THE FIT AND PROPER REVIEW: FINDINGS AND RECOMMENDATIONS

5.1 Scope Area #1: Design of Fit and Proper Arrangements

The Trustee has in place policies, processes and governance arrangements designed to meet the obligations of SPS 520. These include the Fit and Proper Policy, Director Appointment, Performance and Renewal Policy and the Fit and Proper Assessment Process. The Conflicts Management Policy, Director Training Policy, and the Responsible Person Skills Matrix Form (**Skills Assessment**), also support the implementation of the fit and proper requirements.

The Fit and Proper Policy details the obligation for the Trustee to assess fitness and propriety before an individual is appointed to a responsible person position and to conduct a reassessment on an annual basis. Criteria for the assessment are set out across both the Fit and Proper Policy and the Fit and Proper Assessment Process. As part of the annual assessment, Directors complete both their Skills Assessment and a declaration that they continue to be a fit and proper person.

The Company Secretariat is responsible for conducting the fit and proper assessments and providing a report to the Board Nominations Committee on all initial assessments for new Directors. The Nominations Committee reviews the information provided and makes a recommendation to the Board. The Board reviews the recommendation provided by the Nominations Committee and determines the appointment of an individual and their committee membership.

5.1.1 Board Skills Assessment

Context

Prior to appointment, and on an annual basis, Directors are required to complete a self-assessment form against the Skills Sets contained in the Skills Assessment. These skill sets comprise the collective skills that the Board and Board Committees require to fulfil their roles and are also used to identify training needs for individual Directors. Directors self-assess as being either 'Baseline', 'Competent' or 'Expert' for each skill set. Directors are provided with guidance as to what experience or qualifications would determine their level of skill in each area. Where a Director self-assesses as an expert, the Director is required to provide a rationale for this rating.

The intention of the Skills Assessment is to ensure that the collective skill requirements for the Board are met through a combination of the skills possessed by individual Directors. This is reflective of the requirement in SPS 510 Governance (**SPS 510**) for Boards to collectively possess the skills necessary to prudently manage a RSE Licensee's business operations. The Skills Assessment includes a section for Directors to identify any additional training or professional development requirements they have for



the upcoming year and there is a further opportunity to identify further specific training requirements as part of the annual performance assessment completed for each Director.

Finding

The Board Skills Assessment, including related processes, require uplift to reflect the expanding size and complexity of the business.

The guidance provided to accompany the Skills Assessment is divided into two sections and Directors can choose which set of criteria to use when assessing their skill level. The first set of criteria is 'Skill Set/ Knowledge Base' which is focused on practical experience and knowledge and the second set of criteria is 'Training/ Qualification' which covers experience gained through time served as a board member, external training and formal qualifications. Directors can choose which set of criteria to use for different skill sets meaning that they can assess based on what is most relevant for their background and that nominees are able to assess themselves without being limited to prior Board experience. Although guidance is provided on the application of the Baseline, Competent and Expert ratings, this guidance is broad and open to interpretation. For example, to rate themselves as Baseline for the Insurance skill set, a Director needs to believe they can demonstrate an understanding of the key elements of the Trustee's Insurance Management Framework including the Insurance Strategy and an understanding of the member and employer research. As an assessment criteria, this is open to a significant degree of interpretation by individuals and it is also not clear exactly how a Director would support or evidence their degree of understanding.

In addition to being broad, the guidance also places heavy emphasis on time served on the Board rather than requiring Directors to demonstrate practical experience in a skill set. As an example, a Director can rate themselves as Expert in Investment Risk Management by attending Investment Committee meetings and training over a 24-month period. There are also instances where the guidance provided allows Directors to provide a rating based on experience that may not be relevant to the skill set being assessed. One example of this is the 'Industry Knowledge - Superannuation Industry Knowledge' skill where a Director can rate themselves as Expert because of prior experience in a director or management role in a Registered Organisation, defined in the Skills Assessment as a union, member, employer or industry association or NGO where these organisations are unlikely to have provided direct experience of the superannuation industry.

This approach can create flexibility for Directors to demonstrate their experience without overreliance on formal qualifications but can also mean that in their annual assessments, individuals may choose to assess themselves at the higher end of the rating scale based purely on time served on the Board, without necessarily being able to demonstrate a true level of expertise in a topic. This may be as a result of the use of a three-tier rating scale which limits the options for Directors and limits flexibility. We note that some other organisations use a five or six-tier scale where the lower level ratings emphasise exposure to a topic and the higher levels focus on true expertise and mastery of a subject.



There is currently no formal validation or review of Directors' skills self-assessment by the Company Secretariat team. This means that although the Board's skills are ultimately assessed as a collective, there is no review or challenge of individual Directors' ratings to determine whether those ratings are reflective of an individual's actual skills and experience or that the rating matrix is being applied consistently. As an example of the challenges this lack of review can cause, Directors are required to provide a rationale where they rate themselves as Expert but in the most recent self-assessment, this rationale was not recorded in 51% of instances where an Expert rating was given for a skill set, making it difficult to accurately understand the skills and capability of the Board.

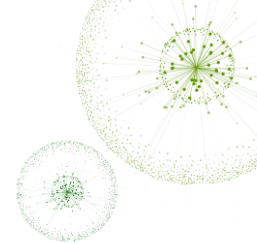
The combination of a self-assessment supported only by broad guidance, a rating scale that places a heavy weighting on time in role and a lack of review or validation of how that assessment is completed poses a risk that the assessment is not rigorous enough and not applied consistently by Directors. As a result, the Board may over or underestimate its collective competence, raising issues in accurately identifying skill gaps.

Recommendations

The rating scale should be reviewed to place more emphasis on practical experience and provide firmer guidance on the experience required to justify each rating. A mechanism should also be in place to allow a formal review of completed Skills Assessments by the Company Secretariat, Nominations Committee and Chair of the Board, to consider whether the assessment criteria are being applied consistently and accurately.

Recommendation 1.1: Revise the rating scale guidance for the Board Skills Assessment to place more emphasis on practical experience and provide firmer guidance on the experience required to justify each rating. Consider increasing the number of rating options to provide more flexibility for Directors and to better capture differing degrees of skills and experience.

Recommendation 1.2: Establish a process that allows for greater degree of review and challenge of annual Director Skills Assessments by the Company Secretariat and ultimately the Chair of the Board to ensure consistent and accurate application of the assessment criteria. The output from the Skills Assessments (and any training needs identified through individual Director performance assessments) should then flow into a formal training plan to upskill both individual Directors and the Board as a collective.



5.1.2 Annual Assessment Process

Context

SPS 520 stipulates that an annual fit and proper assessment must be carried out for each responsible person, including Directors. The Trustee's Fit and Proper Policy addresses this requirement by establishing an annual declaration where each Director verifies their ongoing fitness and propriety. The Review observed that other information such as Australian Federal Police and insolvency checks may also be obtained but this is not a formally documented part of the annual assessment.

The Annual Fit and Proper Declaration Form requires Directors to positively declare that they:

- Have not been disqualified from acting as a trustee, officer or director of a superannuation entity under the SIS Act;
- Are not prohibited from being an officer or director of a body corporate under the *Corporations Act 2001* (Cth);
- Meet the criteria listed in section 14(b) of SPG 520;
- Have attended all or completed in full, all items listed in their personal training record held by the Trustee; and
- Have declared any amendments to the Register of Relevant Interests and Duties.


The annual declaration and skills assessment are useful elements of assessing ongoing fitness and propriety and can serve as a mechanism to reinforce Directors' understanding of the fit and proper requirements. However, the Trustee's current approach places the emphasis on Directors to self-identify any issues rather than on the Trustee undertaking an independent process to determine whether an individual continues to be a fit and proper person.

SPG 520 states that an attestation from a Director would generally be sufficient for an annual review of a person's fitness and propriety. However, it also acknowledges that these representations may not be conclusive, particularly where the individual making the assessment of fitness and propriety becomes aware of any material matter not previously identified. Better practice for organisations is to not solely rely on attestations but for the organisation to conduct their own, independent information gathering exercise to identify any items that may be relevant in the assessment of fit and proper that may not be reflected in the attestation.

Finding

The annual assessment of fit and proper places an over-reliance on the Director declaration and skills assessment.

The Trustee does not currently have a formal process in place that requires the Company Secretariat to review and assess the information provided by Directors as part of their annual declaration, nor does the Trustee have a process where the Company Secretariat undertakes their own, independent



checks to support the reassessment of fit and proper. As noted above, SPG 520 states that attestations may be sufficient, although they may not be conclusive. Industry better practice includes formal review processes to support declarations made by Directors. This lack of a formal process also results in a lack of documentation, beyond the Directors' declarations and skills assessments, to support that a comprehensive annual assessment has been completed. As an example, in December 2022, multiple news outlets published stories about an alleged altercation involving one of the Directors and a member of the public at a festive end-of-year event. Although relevant to a fit and proper assessment, this was not raised by the Director in their annual declaration and no evidence was provided to Deloitte that demonstrated the allegations were considered during the Director's 2023 fit and proper examination. The allegations should have been identified for a deeper investigation of the facts and surrounding context. Notwithstanding this observation, the Review notes that as part of the ask to assess the current fitness and propriety of Directors (refer to **section 5.2**) Deloitte identified this news article and concluded it did not impact the opinion that the Director was fit and proper. Refer to **section 3.3** for details of the factors that Deloitte considered when assessing fitness and propriety.

Recommendations

The approach to the annual assessment should be uplifted to be more rigorous and provide the Board, management and other stakeholders with the confidence that the Directors entrusted with overseeing the Fund continue to be fit and proper persons.

Recommendation 1.3: Uplift the annual assessment to include a more rigorous review by the Company Secretariat of the Director self-assessment to confirm that there are no other factors that may inform the assessment of the ongoing fit and proper assessment to complement the existing Director declaration. This review should be aligned to the existing process for newly nominated Directors and could include the following checks:

- Australian Federal Police check to identify any new criminal convictions;
- Insolvency checks to validate whether an individual has been declared bankrupt;
- ASIC name search to validate amendments to the Register of Relevant Interests and Duties;
- ASIC and APRA banned and disqualified registers to validate that the individual has not been banned by either regulator; and
- Media searches covering the period since the most recent assessment to identify any concerns about an individual's character, including whether there are any pending criminal or civil proceedings.



The outcome of the initial assessments, when presented to the Nominations Committee, should include any considerations for the Committee when reviewing the information provided. Relevant considerations could include whether:

- Any identified issues are in relation to a nominee's professional practices;
- Any court proceedings were discontinued;
- The time period that has passed between an event and the individual's nomination to the Board mitigates the potential impact of that issue; or
- The issues identified present a risk that the individual will not be able to properly perform their duties as a Director.

Recommendation 1.4: Document, within the Fit and Proper Policy, a requirement for the Company Secretariat to review and assess the information submitted by Directors in their Annual Declaration, as part of the annual assessment of fit and proper. This review should be of a similar level of rigour as the initial fit and proper assessments for nominee Directors.

Recommendation 1.5: Establish a process to document and retain records of the fit and proper checks completed as part of the annual assessment, including the outcome of the review of Directors' declarations. This should include documenting the results of checks where no factors were identified for consideration, such as where media checks have returned no result.

5.1.3 Director Nomination Process

Context

The Trustee's requirements for the appointment and removal of Directors are set out in the United Super Pty Ltd Articles of Association and are also covered by the Fund Governance Policy and the Director Appointment, Performance and Renewal Policy.

The Articles of Association requires that new Director appointments will only take effect after:

- the appointor has considered the existing skills and experience of the Board and of the appointee, and the appointee demonstrates one or more skill or experience set out in the Board skills matrix;
- all relevant police checks and searches regarding the appointee's suitability to act as a director have been completed;

- the Board is satisfied that the appointee is not disqualified from acting as a director pursuant to the requirements of the Relevant Requirements and the Corporations Law;
- the appointee has executed a duly completed consent to act as a director; and
- notification of the appointee's appointment or removal has been delivered to the Board

The consideration of existing skills and experience of the Board is based on the outcomes of the Board Skills Assessment that is used to identify skill gaps that sponsoring organisations should consider when identifying potential nominees.

The Company Secretariat provides nominating organisations with appropriate information to consider when identifying nominees, including any skill or experience gaps the Board has, however those organisations are under no obligation to meet the request for individuals to possess specific skills. The Review noted through interviews that, in some instances, nominating organisations have explicitly sought candidates with specific skills, however the Review also observed correspondence between the Trustee and a nominating organisation where a request was made for a nominee with investment skills or experience but the eventual Director was nominated on the basis of their skills and experience in unrelated areas (although those areas did form part of the Board Skills Assessment).

In addition to the above, the Fit and Proper Policy and the Director Appointment, Performance and Renewal Policy, include the potential for an individual to not be appointed to the Board if they have failed the propriety limb of the fit and proper requirements. However, as noted previously, the fit and proper test is subjective and therefore open to differing interpretations.

Finding

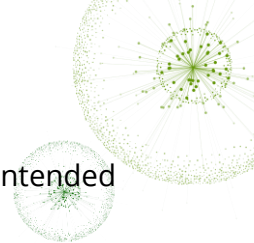
A mechanism should be established to enable nominated Directors to be rejected if required.

There is currently no explicit mechanism in place that would allow the Board to reject a nominated Director unless they fail to meet one of the criteria set out above (e.g., they are disqualified or prohibited under the Corporations Act) or fail to meet the subjective propriety limb of fit and proper.

Such a mechanism would enable the Board to take a broader view of whether acceptance of a nominated Director is in the best interests of the Fund and its Members. Circumstances where this mechanism may prove beneficial could include where a Director meets the competence requirements of fit and proper but does not have the specific skills required by the Board at that time or where the Board has concerns that appointment of an individual may negatively impact the reputation of the Trustee.

The benefits of such a mechanism were acknowledged by several stakeholders during the interview process.

Given the benefits of the Equal Representation Model and the importance of member and employer bodies having the right to nominate Directors, the Review anticipates that a mechanism for the Board



to reject a nominee would only be exercised in exceptional circumstances and would not be intended to dilute or alter the rights of nominating organisations.

Recommendation

A formal mechanism to allow the Board to reject a nominee should be implemented.

Recommendation 1.6: Establish a formal mechanism for the Board to reject a nominated individual in exceptional circumstances. This mechanism should extend only to rejecting a nominee, and the relevant nominating body would retain responsibility for identifying a suitable alternative.

5.1.4 Director Tenure

Context

The Director Appointment, Performance and Renewal Policy, states that Directors are appointed for a term of three years, after which they are eligible for re-appointment, with a maximum tenure on the Board of 12 years. When a Director reaches a tenure of 11 years, a succession planning process is commenced. This process includes consideration of whether there are exceptional circumstances that warrant the extension of a Director's tenure for a predetermined and limited period. The use of exceptional circumstances to extend Board tenure is an important aspect of Board governance as the tenure of individual Directors is as important as the tenure of the entire Board and allows organisations to stagger new appointments and manage the overall skills and experience of the Board.

The Policy defines exceptional circumstances as being where the skillset or experience of a Director would be required on the Board or a Committee, for example:

- Where there is a significant skill gap on the Board (which may include the key skills and experience, which a Director - who is the current Chief Executive Officer (**CEO**) of, or holds a senior leadership position within, one of the Fund's sponsoring organisations - brings to the Board;
- During a fund merger or significant business activity;
- To support specific strategic initiatives that are being considered by the Board;
- Where an appropriate replacement has not yet been found;
- Where the departure of a Director from the Board would result in significant disruption to the Board and/ or the Fund; or
- To ensure there is an appropriate stagger of tenure periods.



Where an exceptional circumstance is identified, relevant information should be documented and considered by the Nominations Committee which will then endorse the exception to the Board which will make the final determination.

Finding

There is insufficient documentation of the exceptional circumstances surrounding the extension of Director tenure.

In the course of the Review, Deloitte observed that, in 2023, the tenure of two now former Directors was extended beyond 12 years. The tenure extensions of both Directors were approved by the Board for a period of three years, following endorsement by the Nominations Committee.

The Board meeting minutes indicate that the extensions were approved due to the existence of exceptional circumstances, however there is no indication as to the precise nature of these circumstances which would be seen as industry better practice.

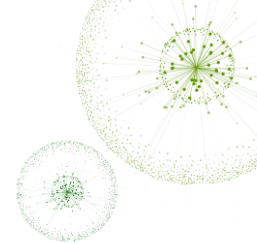
The lack of clearly documented rationale limits the extent to which this Review can address whether the exceptional circumstances identified align with the requirements of the Director Appointment, Performance and Renewal Policy and whether the length of the tenure extensions was appropriate. Ordinarily, it would be expected that a tenure extension only be approved for a period of time sufficient to resolve the exceptional circumstances and appoint a new Director.

Recommendation

Where an exception to the Director tenure limit is applied by the Board, there should be a clearly documented rationale that sets out the details of the exceptional circumstances faced by the Board, the skills and capabilities possessed by a Director that address those circumstances (and why the Board is not able to address them without that Director) and the rationale for the duration of the tenure extension.

This level of documentation would support the Trustee in justifying tenure extensions as well as ensuring that tenure extensions are for a suitable period of time.

Recommendation 1.7: Update the Director Appointment, Performance and Renewal Policy to specify the information that should be presented to, considered and documented by the Board when assessing and approving tenure extensions.



5.1.5 Conflicts of Interest

Context

The Trustee has a Conflicts Management Policy that sets out how the Trustee identifies and manages actual, potential and perceived conflicts of interest. The policy applies to the Trustee, responsible persons (including Directors) and all employees of the Trustee. A copy of the policy is provided to Directors as part of the nominations process and initial fit and proper assessment.

As part of its conflicts identification and management arrangements, the Trustee maintains a Register of Relevant Interests and Duties for responsible persons which records any external appointments and shareholdings, and a Conflicts of Interest register which includes all conflicts notified to the Trustee and any mitigating actions or management plans.

Finding

The potential conflicts of interest arising from a Director's representation of a union or employer are not recorded in the Register of Relevant Interests and Relevant Duties.

Through the documentation reviewed and interviews with Directors, the Review observed a high level of maturity in the Board's understanding of, and ability to identify, potential, perceived or actual conflicts of interest. Each Board meeting begins with a standing agenda item for Directors to declare any potential conflicts of interest. Where a conflict is declared, the Chair of the Board will decide how it should be managed and the Review saw evidence of Directors absenting themselves from discussions and decisions as a way of managing individual conflicts.

The Register of Relevant Interests and Duties is intended to record all interests and duties of responsible persons. As of 24 September 2024, the register reflects directorships and other external appointments held by Directors and separately denotes the organisation that has nominated a Director. References to nominating organisations are made in such a way that they appear to be intended to identify Directors rather than reflect an external relationship that could present a potential conflict of interest. Whilst Directors may not necessarily be directly employed by a nominating organisation, they may still be expected to represent the interests of that organisation on the Board and are dependent on that organisation for their continued role as a Director on the Board, both of which could represent potential or perceived conflicts of interest.

During interviews with Directors, the Review discussed their opinions as to whether association with or membership of a nominating organisation could lead to a potential or perceived conflict of interest with their role on the Board and if so, whether that association should be recorded in the Register of Relevant Interests and Duties. The opinions of Directors differ on this point, however there were two consistent observations that arose from Review discussions. The first is that all Directors (and current nominees) have a clear, and at times passionate, understanding that their role on the Board is to

represent the interests of all Members, regardless of any affiliation to member or employer organisations and other external interests. The second is that nomination by an organisation is an essential component of the Equal Representation Model and that Directors are intrinsically aware of how they came to sit on the Board and that any potential conflicts of interest arising from the model are well managed through the Board's usual processes as noted above.

Recommendation

In general, membership of, or association with, any external organisation will create potential or perceived conflicts of interest which could become actual conflicts depending on the nature of agenda items being discussed by the Board, is a well understood principle. On this basis, nomination by an employer or member organisation should be recorded in the Register of Relevant Interests and Duties in the same manner as other external appointments. This view was supported by certain Directors during the stakeholder interview process.

It should be noted that the presence of a potential or perceived conflict of interest does not suggest that individual Directors or a Board operating under the Equal Representation Model is unable to appropriately represent the interests of the Fund's Members. Instead, they should be clearly identified and recorded in the same way as other interests to ensure a consistent level of transparency and rigour.

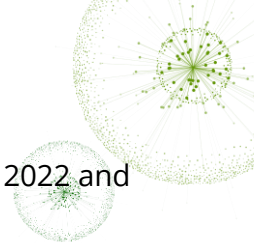
Recommendation 1.8: Formally record the Director's representative member or employer organisation in the Register of Relevant Interests and Duties.

5.2 Scope Area #2: Reperformance of Fit and Proper Assessments

Deloitte reperformed the 2023 fit and proper Director assessment based on information available to the Trustee at that time. This process included interviewing all current, former and nominee Directors, with the exception of one former Director who declined to be interviewed. Based on examination of documentation, the Review agrees with the Trustee's assessment that all Directors met the fit and proper criteria at the time of the last review and agree it was prudent for the RSE Licensee to conclude the Directors were fit and proper, as per SPS 520.

A summary of the outcome of the checks completed for each Director is set out in **Appendix F**. The checks reviewed include the following information available to the Trustee at the time of the 2023 review:

- Australian Federal Police checks provided by the Trustee, which were conducted between December 2022 and July 2023;



- Insolvency checks provided by the Trustee, which were conducted between November 2022 and September 2023;
- Whether the Directors were listed in the ASIC Banned and Disqualified Person Register or APRA's Disqualification Register;
- A review of the ASIC name search results for each Director to verify the information contained in the Trustee's Register of Relevant Interests and Duties and identify any potential conflicts of interest;
- Past social media checks completed by the Trustee where these were available for individual Directors;
- A review of the qualifications completed by each Director as listed on their curriculum vitae and Director application form. In some cases this was supported by a qualifications verification check conducted by the Trustee; and
- The most recent Responsible Persons Skills Assessment and Annual Fit and Proper Declaration Form for each Director.

It should be noted that while the Trustee's annual fit and proper assessment is based upon the Annual Fit and Proper Declaration Form (as noted in **section 5.1.2**), in some cases additional checks had recently been completed and information relating to past assessments and Directors' initial applications was also available. The Review considered all of this information in making the assessment.

Where information was not available, or reliance was placed on historical information, the Review did not consider this as detrimental to the conclusion that a Director meets the standard of a fit and proper person.

5.3 Scope Area #3: Conduct Fit and Proper Assessment

Deloitte conducted an assessment of fit and proper for all existing and nominated Directors using a combination of information provided by the Trustee, information identified by way of own research and interviews with individual Directors. Based on this assessment, the Review concluded that all current Directors and nominated Directors meet the fit and proper criteria as per SPS 520 and that it is prudent for the RSE Licensee to conclude that the Directors are fit and proper, as of the date of this Report.

A summary of the outcome of the checks completed for each Director is set out in **Appendix G**. The checks performed include the following information:

- Insolvency checks conducted in October 2024;
- Whether the Directors were listed in the ASIC Banned and Disqualified Person Register or APRA's Disqualification Register;



- A review of the ASIC name search results for each Director to verify the information contained in the Trustee's Register of Relevant Interests and Duties and identify any potential conflicts of interest;
- A review of media search results for individual Directors;
- A review of the qualifications completed by each Director as listed on their curriculum vitae and Director application form;
- The most recent Responsible Persons Skills Assessment either for 2023 or 2024; and
- The Annual Fit and Proper Declaration Form for each Director where this has been completed for 2024.

The Review did not request recent Australian Federal Police Checks due to the timing of the review period and these checks have not yet been completed by the Trustee in the course of the 2024 annual review. The Review did, however, review Federal Police Checks conducted between December 2022 and July 2023.

In conducting the assessment, the Review sought to consider the totality of an individual's competence and character, considering the representative model that the Trustee operates in and the membership base it targets. This includes consideration of the fact that the Trustee operates within the Equal Representation Model, one of the benefits of which is that individual Directors have direct exposure to the member's and one of the skills they bring is a clear understanding of the needs and interests of those members. The Review also adopted the overarching consideration that any factors that might raise questions about an individual must be reviewed in the light of the SPS 520 definition of fit and proper and must prevent an individual from properly performing the duties of their position.

Considering the totality of an individual's competence and character is particularly relevant when assessing the subjective, propriety limb of fit and proper, and the media coverage of some individual Directors. In assessing fitness and propriety, the Review adopted the following principles:

- Equal consideration should be given to both formal education and professional qualifications and relevant practical experience;
- Unproven allegations of criminal activity (whether in the media or as part of legal proceedings) are not an indication that an individual is not fit and proper;
- Civil penalties applied to an individual are not necessarily an indication of bad character, particularly when these penalties are considered in the light of previous roles in industries and organisations where an individual is more likely to be subject to investigations. An example of where such a consideration is relevant is where an individual has contravened requirements under the Fair Work Act 2009 by unlawfully entering construction sites but the contravention was in relation to their work as a union official and did not lead to them being subject to a penalty order within the meaning of the SIS Act and therefore does not disqualify the individual from holding a position as a Director;



- Concerns raised in relation to prior business activities should be considered in the context of an individual's role and responsibilities in that organisation, the extent to which they met those responsibilities and whether there was any accusation of negligence or illegal activity being the cause of any issue;
- Media coverage of individuals should be reviewed in the political and social context surrounding the coverage; and
- Factors that are relevant for assessing an individuals' character should be assessed both individually and collectively to determine any patterns of behaviour that may be relevant to the assessment.



6. THE BEST FINANCIAL INTERESTS DUTY REVIEW: FINDINGS AND RECOMMENDATIONS

6.1 Scope Areas #4 – 8: Design and Operation of the BFID Framework

Due to consistent themes in findings and observations, scope areas four to eight have been considered and addressed collectively below. These scope areas (individually specified in **Appendix C** of this Report) relate to the design and operation of the BFID at Cbus.

This Report addresses the BFID design and operation scope areas by way of the following themes:

1. Policies and Frameworks;
2. Proposals and Supporting Analysis;
3. Partnership Agreement and Benefit Schedule;
4. Ongoing Assessment and Monitoring of Partnership Agreements;
5. Governance and Reporting of Industry Partnership Expenditure Decisions.

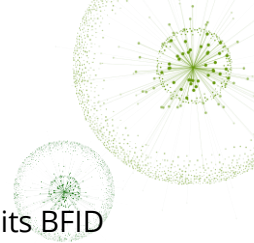
As per the agreed scope, this Review was limited to the Trustee's Expenditure Decisions connected to the CFMEU in effect, or being made, as at 1 June 2024. A detailed summary of the Expenditure Decisions and their value is included in **Appendix D**. The scope also included an assessment of current CFMEU related expenses with regard to experience of similar CFMEU expenses, where they exist, in the past three years. Based on documentation provided by the Trustee, the majority of expenditure subject to this Review was made by way of industry partnerships, however, there was also expenditure by way of lease agreements and investment research (related to the renewables sector).

6.1.1 Policies and Frameworks

Context

To govern expenditure decisions, the Trustee has several policies and frameworks in place including the following:

- Risk Management Framework;
- Compliance Management Framework;
- Member Outcomes Framework;
- Financial Delegations and Expense Policy;
- Outsourcing Policy; and
- Procurement Policy.



The above policies and frameworks are collectively referenced in (and form) the Cbus BFID Framework, which is a specific document designed by the Trustee to outline how it manages its BFID obligations. The objectives of the BFID Framework are to:

- Clarify roles and responsibilities, to ensure BFID is embedded throughout Cbus;
- Promote ongoing awareness of BFID obligations facing directors and employees;
- Define the policies, procedures and controls that govern expenditure approval;
- Ensure appropriate record keeping is maintained to meet the evidentiary burden of proof; and
- Implement appropriate oversight and review of the BFID Framework.

The BFID Framework classifies expenditure as either 'prudential', 'investment' or 'strategic'. Where a 'strategic' classification is applied, the expenditure is then required to be assigned as either 'significant' expenditure, 'designated' expenditure or 'other' expenditure. Strategic expenditure is defined in the BFID Framework as "*...discretionary or non-essential to the ongoing operation of a superannuation entity*". As per the BFID Framework, all business units requesting fund expenditure that has been classified as 'strategic' must complete an assessment in an approved BFID Assessment Template (this activity is referred to as a **BFID Assessment**). To meet the evidentiary burden of proof, the BFID Framework identifies that a BFID Assessment "*...must include adequate documentation to support the estimate of financial benefits to be derived from the strategic expenditure*".

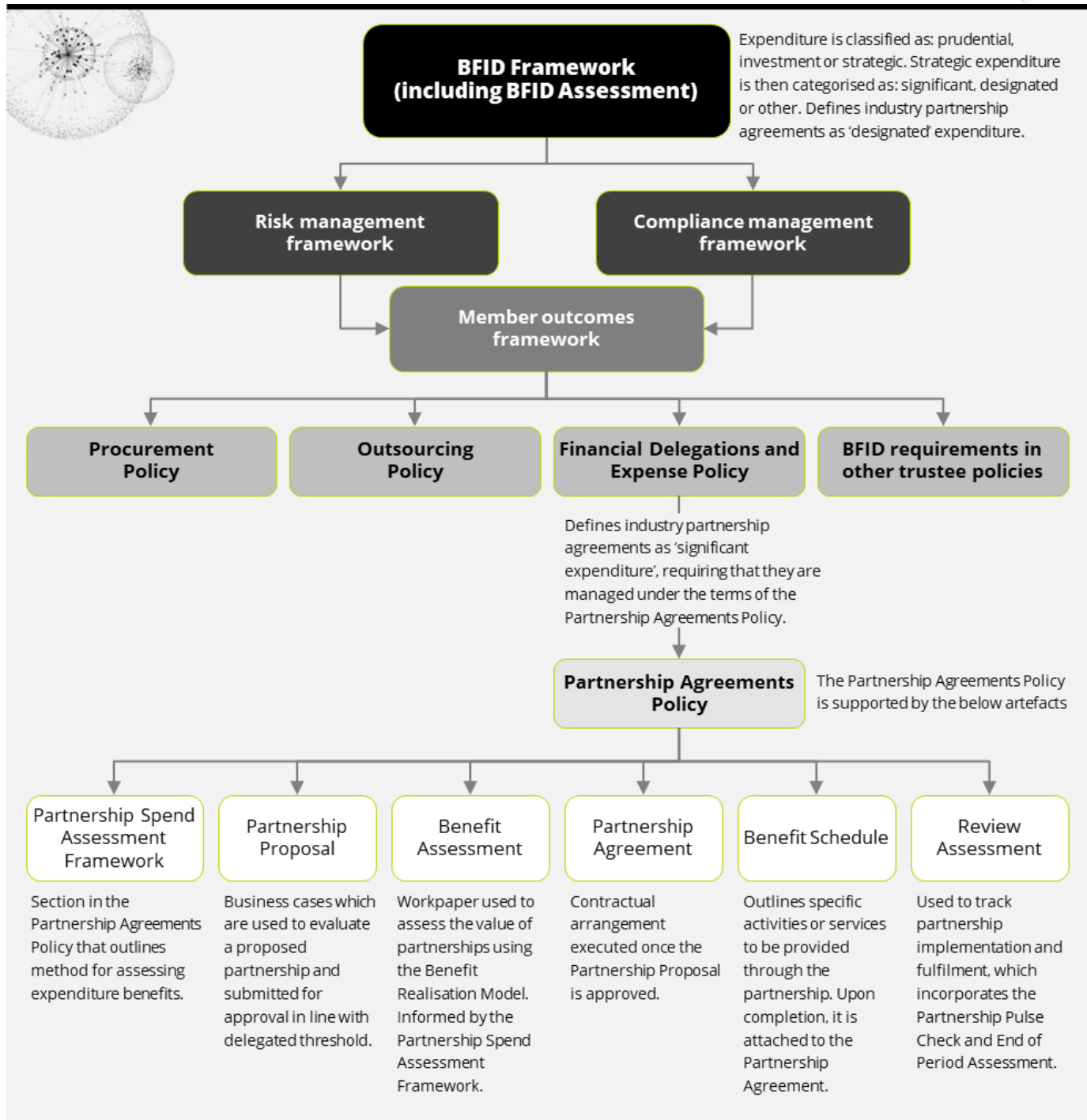
The BFID Framework does not replace or override existing Trustee approval practices, or other regulatory requirements, in respect of expenditure.

In addition to the BFID Framework, the Trustee has other documented processes and policies in place that govern the approval and management of industry partnership expenditure decisions. These processes are documented in the Financial Delegations and Expense Policy, which requires all partnership agreements be managed under the Partnership Agreements Policy (which establishes a framework and guidelines for the creation of a partnership between the Trustee and a partner organisation).

Partnership categories to which the Partnership Agreements Policy applies include industry partners in the building, construction and allied industries (which includes the CFMEU). The Partnership Agreements Policy defines a partnership agreement and outlines how to evaluate a partnership agreement proposal, to aid management evaluate suitability and objectives.

The governance structure outlined above is depicted below.

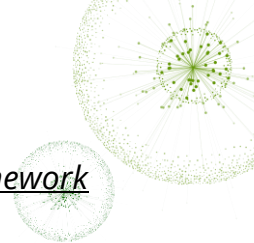
Figure 1: Snapshot of policy and framework structure related to the BFID at Cbus



Findings

Although the Trustee has frameworks and policies in place to support it in meeting the BFID obligations, overall the Review identified that the documentation required uplift to provide a consistent understanding and approach to evaluating and approving BFID expenditure.

This finding is explored in greater detail below.



In relation to expenditure, there is misalignment in documentation between the BFID Framework and the Partnership Agreements Policy.

The BFID Framework does not reference the Partnership Agreements Policy or related key documentation. Likewise, the Partnership Agreements Policy in place, prior to the version released in March 2024, made no reference to the BFID Framework. This is despite updates actioned to the policy in 2022, post the introduction of the BFID in which reference to the BFID obligation was included, but was silent on the existence of the BFID Framework.

Since March 2022, the concepts are now broadly connected i.e., there is reference to the BFID obligations in both documents but not the documented BFID Framework that has been developed and implemented by the Trustee. For example, the most recent iteration of the Partnership Agreements Policy, dated 19 March 2024, references the BFID as a key evaluation consideration of a partnership agreement (in addition to the Sole Purpose Test). It also identifies that each “...*business case will document the financial benefits delivered by the partnership, that provide the basis for meeting the Trustee’s obligations under the Best Financial Interests Duty*”. It outlines that partnerships of more than \$2,500 will be reviewed by the Legal Team before the partnership agreement is executed to ensure all legal obligations (including the BFID) are met. The current version of the Partnership Agreements Policy (effective March 2024) however, does not identify that the Trustee has a specific BFID Framework in place to address the relevant requirements.

There is currently no explicit guidance on how the industry partnership expenditure practices align between the BFID Framework and Partnership Agreements Policy, placing great reliance on the experience of employees to identify the correct process to follow and effectively meet all the expenditure requirements in place.

Inconsistency between the BFID Framework and Partnership Agreements Policy would leave open a potential risk that teams, unfamiliar with the partnership agreements process, follow the wrong framework in relation to a proposed expenditure. If the wrong framework is selected, incorrect assessment models would be applied (the Partnership Agreements Policy requires specific assessment tools be used such as a Benefits Assessment template) and the member benefits calculated inconsistently. A variety of procedural issues could also occur such as insufficient documentation in place supporting the expenditure decision-making process.

The classification of expenditure is inconsistent across policies and frameworks.

How an expenditure is classified will determine the relevant processes and governance to be applied at Cbus. Despite this, the classification of industry partnership expenditure varies under different policies and frameworks at Cbus.

For example, the BFID Framework classifies expenditure as either prudential, investment or strategic. Strategic expenditure is further classified as significant expenditure (as defined in SPS 515),

designated expenditure or other expenditure. Industry partnership expenditure is then defined, under the BFID Framework, as designated expenditure i.e., “...*non-core expenditure that Cbus has designated as high risk under the BFID regime*”. The Financial Delegations and Expense Policy defines Partnership Agreement expenditure as significant expenditure i.e., as defined in SPS 515. This is despite the definition of significant expenditure also being included in the BFID Framework as being expenditure that encompasses “...*non-core expenditure that is captured by SPS 515...*”.

The Partnership Proposal adds to the disconnect between the classification and categorisation of expenditure in that it does not always align to either the BFID Framework or the Financial Delegations and Expense Policy definitions. For example, in a number of Partnership Proposals, industry partnership expenditure was categorised as ‘Discretionary’ expenditure which does not align with either the BFID Framework definition or Financial Delegations and Expense Policy definitions.

To align with good governance, the classification of industry partnerships should be consistent across documents and frameworks. The inconsistent approach to categorising expenditure for industry partnerships should be addressed to reduce any risks of incorrect use of processes to prepare, review and approve expenditure decisions (which may impact the Trustee’s ability to meet the BFID requirements).

Lack of clarity in how the Partnership Proposal aligns with the BFID obligations.

As superannuation funds are unique in size, business mix and complexity, a variety of tools may be used to meet the BFID requirements.⁹⁹ The AIST Framework suggests that trustees would benefit from having a scalable, standardised approach to an industry partnership proposal which can adjust depending on the significance or importance of the expenditure.¹⁰⁰ This approach would apply to initial decisions as well as renewal and/ or modifications to agreements.

As outlined above, industry partnership agreements at Cbus are approved using a Partnership Proposal whereas wider expenditure is governed by the BFID Framework and the BFID Assessment Template.

This Review found that for each of the industry partnership expenditure decisions reviewed, a completed Partnership Proposal was presented to the IPRC stating the purpose of the arrangement, which largely aligned with the purpose stated in the Benefit Schedule.

The Partnership Proposal largely aligns with the AIST Framework, in that it covers:

- A strategic case and purpose, including context as to why the expenditure is required, linkage to the Fund’s strategic objectives and clear articulation of the activities to be undertaken;

⁹⁹ Australian Institute of Superannuation Trustees et al. (2021) ‘Framework for Best Financial Interest Duty’ pg. 12-13.

¹⁰⁰ Ibid.



- A cost benefit analysis using the Partnership Spend Assessment Framework which supports a quantification of value (this is limited in terms of aligning value to Member outcomes);
- Agreed benefit period;
- Administrative elements, including business owner and relevant sign-off roles and responsibilities.

Although there is broad alignment with the AIST Framework, the Partnership Proposals need to be uplifted to include the following:

- Articulate how the stated purpose aligns to member outcomes (e.g., lower costs, fees, improved benefits) in addition to business outcomes (growth in Members or funds under management);
- Align analysis on financial benefits to member outcomes, including clear metrics quantifying how scale will impact Members and sensitivity analysis;
- Set expectations for oversight during and post the period of the proposed Partnership Agreement, including how the agreement will be monitored to ensure that it continues to meet its intended purpose;
- Provide details of the financing approach, including timing and proposed funding source.

If the above uplift to the Partnership Proposal is not actioned, and Cbus continue to utilise the current Partnership Proposal, there is a risk that expenditure is approved based on information that is insufficient to meet the BFID obligations.

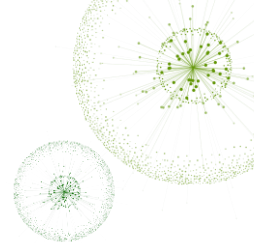
Documentation supporting industry partnership expenditure requires enhancement, to better align with the BFID obligations, and result in a standardised approach to industry partnership expenditure.

The majority of expenditure decisions examined during this Review were classified as industry partnership expenditures for sponsorship. These expenditure types are governed by the Partnership Agreements Policy.

Each of the industry partnership expenditure decisions examined were accompanied by a version of the following (however, noting that some documents received were either in draft format or incomplete):

- A Partnership Proposal, which aligned with the Partnership Agreements Policy;
- A Benefit Assessment that utilised the Partnership Spend Assessment Framework;
- A Partnership Agreement and Benefit Schedule,¹⁰¹ with an effective period including 1 June 2024 and an execution in line with the Partnership Agreements Policy;
- Recommendation and approval in line with the Partnership Agreements Policy, as follows:

¹⁰¹ Reference to benefits within the BFID section of this Report as opposed to services, are because the services provided under the Partnership Agreement and attached Benefit Schedule, are referred to as benefits, not services.



- Up to and including \$30,000, required recommendation by the relevant head of department and approval by the Senior Manager, Industry Partnerships;
- From \$30,001 to \$75,000, required recommendation by the Senior Manager, Industry Partnerships and relevant executives, and approval by the Chief Member Officer; and
- Anything from \$75,001, required recommendation by the IPRC and relevant executives, and approval by the CEO; and
- An assessment of the deliverables obtained as part of the activities undertaken in the prior year agreement.

The Review observed that each expenditure decision appeared aligned with the Partnership Agreements Policy, although it identified several areas that required uplift to enable fully informed decision-making (noting that without this uplift, it may be challenging to demonstrate how the Trustee is meeting the BFID requirements). These areas include:

- Linkage of the defined purpose of the expenditure to the relevant strategic objective and Member outcome;
- Clearly defined and measurable intended member outcomes;
- The ongoing monitoring and oversight of these expenditure decisions;
- The process to make decisions.

Training needs to be uplifted to ensure correct and consistent application of the BFID.

The BFID Framework states that training is “...provided to business unit via the Compliance Team business partner model, reporting to the Board and/ or as requested by users”. Several stakeholders also confirmed during interviews that the BFID Framework and associated obligations are part of the new starter training. These stakeholders confirmed that there was high awareness of the BFID obligations across the Fund.

Deloitte’s review of the BFID training materials noted that the training covered the BFID requirements, including no materiality threshold and the reversal of the onus of proof, Cbus’ approach to the BFID and the BFID Framework. The training materials reviewed did not reference the Partnership Agreements Policy, and related documents, which are required to be used for the end-to-end process for Partnership expenditure. In Deloitte’s view, this training is required for all Cbus employees that prepare, review, approve and oversight industry partnerships.

As such, training and learning materials will, at a minimum, require uplift to incorporate the specific process for industry partnership expenditure and to align with any changes suggested in this Report. The materials should also be assessed to ensure they include/ cover:

- How the BFID obligations are met in practice, including the evidentiary burden of proof requirements at the initiation of a Partnership Agreement and at the point of renewal;



- How relevant tools and templates are used as part of the operating environment for industry partnerships.

The training content may also need amendment to reflect the end-to-end lifecycle of the BFID process to ensure the key obligations and activities that arise at different touchpoints are properly understood and embedded by stakeholders (particularly those with key roles and responsibilities across the expenditure process).

Recommendations

Recommendation 2.1: Review and uplift the BFID Framework, Partnership Agreements Policy and Financial Delegations and Expense Policy to:

- a) Set out and align the classification and definition of expenditure in relation to the BFID.
- b) Align the BFID Framework and the Partnership Agreements Policy.
- c) Clearly outline which policy or framework applies for each type of expenditure decision, including associated templates.

Recommendation 2.2: Review and uplift the Partnership Agreements Policy (and any associated documents) to:

- a) Align the classification and definition of expenditure to the BFID Framework and other related policies and frameworks.
- b) Document the requirement to align expenditure to the Trustee's relevant financial year Corporate Plan (including the relevant strategic objectives).
- c) Document how to quantify measures of success (defined in the Partnership Proposal) including the expected outcomes to Members and any differences across cohorts.
- d) Outline the process for monitoring and documenting measures of success.
- e) Outline the detailed BFID information that must be incorporated into the Partnership Proposals (aligned with the BFID Assessment templates).
- f) Clearly set out the roles and responsibilities for the preparation, review and approval of the Partnership Proposals, Partnership Agreements and Benefit Schedules, including the ongoing lifecycle of oversight and monitoring.
- g) Insert detailed guidance on the information and steps that form the BFID Assessments.

**Recommendation 2.3:** Uplift the BFID training to:

- a) Include the recommendations for the BFID Framework and policies in this Report.
- b) Incorporate the requirements of the Partnership Agreements Policy. This should include the process for preparing covering proposals, review, approval, oversight and reporting for industry partnerships expenditure.

6.1.2 Proposals and Supporting Analysis

Context

The Explanatory Memorandum outlines that expenditure on items not supported by identifiable financial benefits to members, articulated in a clear proposal, is unlikely to satisfy the requirements of the best financial interests duty.¹⁰²

This position was affirmed by SPS 515 that outlines, when making decisions relating to business operations that will result in significant expenditure, an RSE Licensee must be able to demonstrate the purpose of the expenditure, including how the expenditure will contribute to the RSE Licensee meeting its strategic objectives.¹⁰³ This requirement is reiterated by the AIST Framework that also identifies there should be a clear link to member financial outcomes (e.g., lower costs, fees, improved benefits) in addition to business outcomes (growth in members and/ or funds under management).¹⁰⁴

The current Partnership Agreements Policy identifies that each Partnership Proposal will “...document the financial benefits delivered by the partnership that provide the basis for meeting the Trustee’s obligations under the Best Financial Interests Duty”. It also acknowledges that partnerships between the Trustee and partner organisations (that fit certain categories) support the Trustee’s strategic objectives, particularly “...the retention and acquisition of members, strengthening the brand, and improving member outcomes (including financial, physical and mental wellbeing). Partnerships may also be entered into that support Cbus’ strategic objectives in managing environmental, social and governance risk”.

Partnership Proposals used to enter into Partnership Agreements include a section titled ‘Benefit Realisation’. This section contains an overview of the primary objective of the partnership, generally described as being to drive the Trustee’s growth strategy, including the retention and acquisition of Members. There were two exceptions to the typical description provided in the Partnership Proposals subject of this Review, related to lease agreements and investment research. For the lease agreements expenditure, no proposals were drafted because the Trustee did not categorise this

¹⁰² Treasury Laws Amendment (Your Future, Your Super) Bill 2021 s3.36.

¹⁰³ Australian Prudential Regulation Authority (2019) Prudential Practice Guide SPG 515 – Strategic and Business Planning, <https://www.apra.gov.au/sites/default/files/prudential_practice_guide_spg_515_strategic_and_business_planning_august_2019.pdf>, (accessed 10 October 2024) cl. 19(a).

¹⁰⁴ Australian Institute of Superannuation Trustees et al. (2021) ‘Framework for Best Financial Interest Duty’ pg. 13.



expenditure as strategic expenditure. For the investment research expenditure, there was a proposal connected to the BFID Framework that outlined the objective of the expenditure was to *“support the Cbus investment team across a range of areas including deployment/idea generation, information and insights”* and *“The overarching research and inputs are expected to also drive growth opportunities, which should be positive from a fund membership growth perspective as well as further brand recognition and enhancement”*.

Although the Trustee has sections within Partnership Proposals to initiate consideration of strategic objectives. The Review found that Partnership Proposals, and the supporting analysis, required uplift to clarify how an expenditure would better align with strategic objectives and contribute to Member outcomes. This finding is explored in detail below.

Findings

Lack of clear articulation in Partnership Proposals as to how the specific expenditure aligns to strategic objectives and member outcomes.

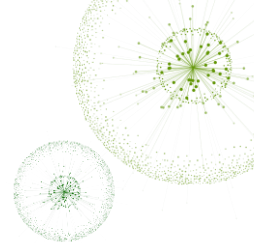
The Partnership Agreements Policy outlines, at a high-level, that the member benefits from industry partnerships include matters such as growth and brand which are pursued for improved scale to facilitate matters such as reduced member costs and enhanced member services.

Additionally, the Partnership Spend Assessment Framework is used to assess the benefit of an industry partnership agreement. To assess a benefit, the Partnership Spend Assessment Framework identifies the formula as a combination of the following:

- Membership benefit;
- Brand benefit;
- Strategic allocation; and
- Past performance.

Despite this emphasis on partnership benefit, and calculation method, there are no metrics outlined in the Partnership Proposal as to how to assess what member outcome will be achieved for each specific expenditure (such as a reduction in fees). There is also no guidance provided as to how the matter should be monitored on an ongoing basis.

While the Partnership Agreements Policy states the purpose of industry partnerships generally, the articulation of how each specific expenditure decision relates or links to the Trustee’s strategic objectives and Members outcomes in the Partnership Proposals should be clearer. This was evidenced during document review and interviews with key stakeholders, where the Review found that although individuals are focussed on ensuring expenditure achieves the relevant strategic objectives and Member outcomes, the related documentation did not always clearly articulate how the two concepts (specific expenditure and member outcomes) were aligned.



This may result in the Trustee not being able to appropriately and adequately meet the BFID requirements.

Lack of clear consultation and review of Partnership Proposals.

As part of the Partnership Proposal preparation and approval, Deloitte expected to observe a robust governance process in place that required consultation, review and challenge by relevant stakeholders. The Partnership Agreements Policy outlines roles and accountability to ensure that a Partnership Proposal is completed as per the documented guidelines. It does not, however, identify specific roles and responsibilities for the preparation of a proposal, including who should be consulted and/ or review a proposal prior to submission for recommendation and approval.

The Partnership Proposals included a risk and legal section that outlines:

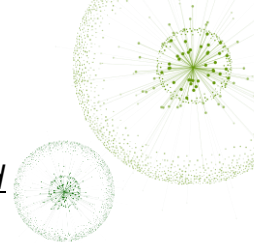
- Sole Purpose Test compliance;
- If the proposal will meet BFID requirements;
- Risks of proceeding with the proposal;
- Risk of not proceeding with the proposal.

There was risk and legal commentary in each completed Partnership Proposal however, as observed during the Review, it was generally the same wording that was used and with no requirement for sign-off from the risk or legal team member who performed the review. The lack of formal risk and legal sign off may result in the risk that a comprehensive review for each Partnership Proposal has not been undertaken, potentially leading to non-compliance with relevant legislation and internal processes.

Deloitte did observe that although the Partnership Agreements Policy does not specifically require the internal Legal Team to review the Partnership Proposal prior to submission to the IPRC, it does require a legal review prior to signing the Partnership Agreement and accompanying Benefit Schedule.

Deloitte would expect that an expenditure proposal includes a review and approval from the relevant finance team or cost centre owner to confirm the expenditure is within the approved budget. From the Partnership Proposals examined in this Review, there was no evidence that an internal finance team or cost centre owner reviewed (and subsequently approved) the expenditure amount included in the Partnership Proposals. As such, it is unclear how the funding and budget consideration/ confirmation was obtained by those preparing the Partnership Proposals subject to this Review.

The inclusion of clear roles and responsibilities in the preparation of a Partnership Proposal, as well during the continued oversight and monitoring of the agreement, would support a consistent, standardised execution of responsibilities across Cbus.



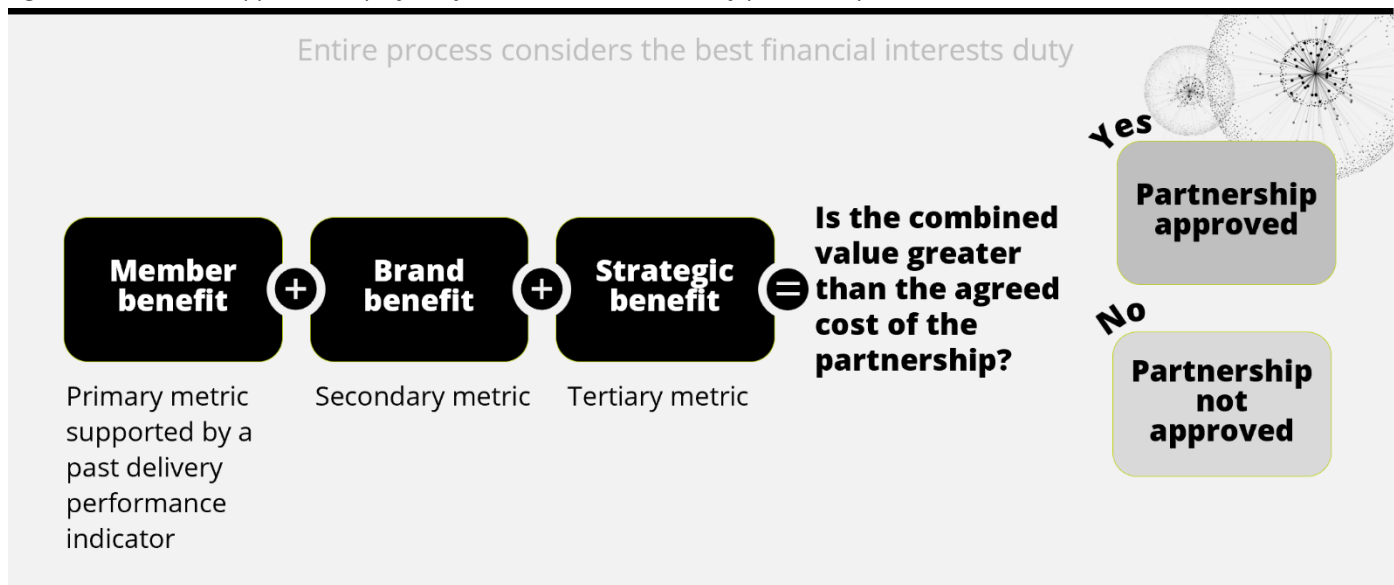
The documented process related to the expenditure model methodology, assumptions and ownership requires uplift.

APRA's intent in SPS 515 is to ensure superannuation funds have a rigorous process and data in place that underpins decision-making related to expenditure.¹⁰⁵ This intent was reiterated by APRA in its thematic review of fund expenditure which noted that "...RSE licensees need to make a significant shift from broad reliance on qualitative judgements as a basis for decision making and instead apply robust processes in both the ex-ante (taking the decision) and ex-post (analysing the outcomes of the decision) phases".¹⁰⁶

The need for robust data and documentation is further supported by the AIST Framework that outlines business cases that accompany expenditure decisions should include the underlying assumptions associated with the supporting calculations.¹⁰⁷

From a review of the Partnership Agreements Policy, the Partnership Proposals and from stakeholder interviews, Deloitte understand that the value of a potential industry partnership is assessed as follows:

Figure 2: Assessment approach deployed by Cbus to value an industry partnership



The Review was unable to identify a complete set of underlying data and assumptions that support the above methodology. The most complete summary of information was included within a document prepared by an external consultant which was a deliverable for the Cbus 2019 Partnerships Benefits

¹⁰⁵ Australian Prudential Regulation Authority (2019) Prudential Practice Guide SPG 515 – Strategic and Business Planning, <https://www.apra.gov.au/sites/default/files/prudential_practice_guide_spg_515_strategic_and_business_planning_august_2019.pdf>, (accessed 10 October 2024).

¹⁰⁶ Australian Prudential Regulation Authority (2021) Information Paper: Findings from APRA's superannuation thematic reviews <https://www.apra.gov.au/sites/default/files/2021-10/Findings%20from%20APRA%E2%80%99s%20superannuation%20thematic%20reviews_1.pdf> (accessed 23 October 2024), pg. 16.

¹⁰⁷ Australian Institute of Superannuation Trustees et al. (2021) 'Framework for Best Financial Interest Duty' pg. 13-14.



Assessment Model Review project. This contained an overview of the Partnership Spend Assessment Framework, along with recommendations of changes to methodology and assumptions. However, this document did not provide a complete view of the model methodology and assumptions.

In the Partnership Agreement Policy and the Partnership Proposals, there is reference to assumptions used in the Partnership Spend Assessment Framework but no supporting rationale is provided. For example, from the stakeholder interviews undertaken and correspondence provided, the Review was informed that the conversion rate used to calculate the 'Member benefit' of a partnership agreement is based on the Marketing Sherpa study from 2018; however, there was no further, specific details documented in the disclosure provided regarding the ongoing appropriateness for the industry partnerships being considered. Additionally, through interviews, Deloitte was informed that the 'member value' input for the member benefit calculation is requested on an ad hoc basis from the finance team. It is therefore unclear if the assumption utilised is based on the most recent fund data or whether it represents a consistent input definition.

There is a lack of clear documentation of the methodology underpinning the Partnership Spend Assessment Framework. This results in a risk that an unreasonable method or assumptions may be used to assess the value of industry partnerships, which could lead to an inaccurate assessment of the expenditure and a lack of appropriate evidence to justify the expenditure. Clearer documentation as to the underlying methodology and assumptions of the Partnership Spend Assessment Framework, including an explanation of why an input is appropriate, would support the continuity of knowledge for the framework owner and the broader Industry Partnership team.

There is no formal review process for the Partnership Spend Assessment Framework.

The original Partnership Spend Assessment Framework was developed with the support of an external consultant prior to the introduction of the BFID obligations. From the documentation reviewed, it appears there have been no significant changes made to this framework since its original development.

This Review observed that an independent review of the industry partnership agreement and approval process was undertaken in January 2022. The outcomes of the review included recommendations to uplift the Partnership Spend Assessment Framework. Following the completion of the review, a meeting pack was provided to the Member and Employer Services Committee (**MESC**), which is now referred to as the MEGC, setting out the findings of the review and a proposed approach to implement recommended enhancements over the following 12 months. The minutes of the 17 March 2022 MEGC meeting indicate the recommended enhancements were discussed and agreed by the MEGC.

This Review did not find any evidence that the recommendations of the independent review were implemented.



In addition, there does not appear to be a formal periodic review of the Partnership Spend Assessment Framework to ensure it continues to accurately assess the reasonableness of the partnership spend and the ultimate Member benefit. Timely implementation of any recommendations arising out of such reviews will be important.

There is a lack of clear alignment between the Partnership Spend Assessment Framework and the Members' financial interests.

As previously noted, the YFYS Act sets out expenditure on items not supported by identifiable financial benefits to members, articulated in a clear proposal, is unlikely to satisfy the requirements of BFID.¹⁰⁸ The Explanatory Memorandum provides an example of the expectations with regards to the articulation of the financial benefit of expenditure: *“Orange Superannuation Fund decided to fund a television marketing campaign to promote their fund, spending \$5 million of members' money. Orange Superannuation Fund argues that spending the money will lead to an increase in the number of members by 5,000. As a result of the increase in members, the trustee believes that this will allow them to reduce their fees by 0.01 percentage points by spreading the fixed costs of the fund across more members.”*¹⁰⁹

SPS 515 states that when making decisions relating to its business operations that will result in significant expenditure, an RSE licensee must be able to demonstrate how it will assess whether the expenditure is achieving its intended purpose, including any metrics used.¹¹⁰ The AIST Framework reiterates this position noting a cost benefit analysis should include clear metrics quantifying financial and/ or scale impacts such as changes to funds under management and/ or members, and changes to costs, fees, reserves, premiums and investment performance.¹¹¹ It also notes that any non-financial benefits should not be considered to the detriment of financial interests.¹¹²

To determine financial benefit to members, APRA identified that it is a threshold consideration for trustees who should assess whether the proposed exercise of power will fulfil the requirements of the BFID. APRA also identified that the trustee will need to have robust evidence to support expenditures and related decision-making processes.

The Benefit Assessment is informed by the Partnership Spend Assessment Framework, as outlined above, and the Benefit Assessment template also outlines that 'Member benefit' is defined to include the expected benefit to Members associated with the acquisition and retention of Members through an industry partnership. Although the 'Member benefit' considers the financial benefit to members by incorporating the expected number of new members expected to be acquired or retained through the partnership, there should be a clearer articulation of how this translates to improved member

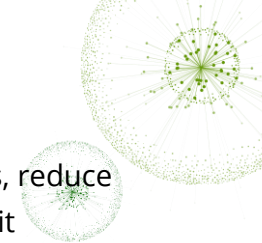
¹⁰⁸ Treasury Laws Amendment (Your Future, Your Super) Bill 2021 s3.36.

¹⁰⁹ Explanatory Memorandum, Treasury Laws Amendment (Your Future, Your Super) Bill 2021 (Cth) [3.37].

¹¹⁰ Australian Prudential Regulation Authority (2019) Prudential Practice Guide SPG 515 – Strategic and Business Planning, <https://www.apra.gov.au/sites/default/files/prudential_practice_guide_spg_515_strategic_and_business_planning_august_2019.pdf>, (accessed 10 October 2024) cl. 22(a)-(d).

¹¹¹ Australian Institute of Superannuation Trustees et al. (2021) 'Framework for Best Financial Interest Duty' pg. 13.

¹¹² Ibid.



outcomes e.g., the acquisition and retention of Members is expected to lead to scale in Cbus, reduce costs and therefore enhance fees and net investment performance for Members. The Benefit Assessment template goes on to define 'Brand benefit' as a consideration of the value of the benefits being provided through the partnership agreement (this is in addition to the 'Member benefit'). The 'Brand benefit' includes the cost of obtaining the benefits provided through the partnership via alternative means. The rationale that the 'Brand benefit' is in addition to the 'Member benefit', should be assessed (and potentially revised) to ensure that duplication of value is not being considered in the decision-making process.

In addition, if, for a particular industry partnership, the 'Member benefit' and the 'Brand benefit' combined are not higher than the proposed cost of the partnership, the Benefit Assessment template concludes that a 'Strategic allocation is required'. The Partnership Agreements Policy states that strategic allocation considers "*...the intangible benefit of being associated with Partners whose activities are aligned with Cbus strategic objectives.*" It also states that "*...where the partnership costs exceed total membership and brand benefits, a decision is required regarding the strategic allocation, with a clear identification of the link to member outcomes based on the funds strategic objectives, and enhanced governance arrangements*". As per the AIST Framework, non-financial benefits should not be considered at the detriment of financial interest. The reliance on the 'Brand benefit' and 'Strategic allocation' by the Trustee means there is a risk that expenditure decisions are approved due to non-financial benefits which would not be in line with BFID obligations and requirements (noting the Trustee has an Enterprise Performance Scorecard that measures success meeting overarching strategic objectives and improving member outcomes, which could mitigate any risks in this space).

Although there are quantifiable metrics in the Partnership Spend Assessment Framework to assess the reasonableness of the costs of a particular partnership, the material requires uplift in several areas including:

- Ongoing assessment and review mechanisms in place for governance, methodology and assumptions (to ensure they remain fit for purpose);
- Undertaking sensitivity analysis to understand how the expected value of the partnership may vary in different scenarios;
- Greater alignment to member outcomes;
- Introduction of defined measures, including quantitative metrics, that can be monitored on an ongoing basis.

Although the Partnership Proposals examined during this Review applied the Partnership Spend Assessment Framework, they generally lacked the detail required to explain/evidence how Cbus has assessed and concluded that expenditure is achieving its intended purpose. This could impact the Trustee's ability to demonstrate how they meet the BFID requirements.

Through interviews, stakeholders acknowledged the challenge in attributing industry partnership activities to specific outcomes, such as retention and attraction of Members. These challenges have been explored in more detail earlier in this Report. As the superannuation industry matures, its data capability, processes and assessment models will need to continue to develop to further align an activity/benefit to a member outcome. This Review was told that Cbus are currently taking steps in this space and uplifting the model that supports the Partnership Spend Assessment Framework. This was also evidenced in the MEGC meeting minutes from February 2024.

The reasonableness of framework assumptions is not monitored on an ongoing basis.

To assess industry partnership expenditure decisions, this Review examined the Partnership Spend Assessment Framework and the individual Benefit Assessments for each expenditure decision.

During this examination, the following matters were identified:

- The model assumptions, e.g., conversion, appear to be consistent across Benefit Assessments however there is no detailed assessment of appropriateness for the stated purpose of the proposed expenditure;
- There is no clear documentation setting out the rationale for the assumptions applied and how these might change over time and in different partnership scenarios;
- There is no accompanying analysis of past experience to determine whether a particular assumption remains appropriate, or whether changes may be required in order to reasonably quantify the expected outcome associated with a particular partnership;
- The review process is focused on the benefits, provided by the partner, being delivered but it also needs to prioritise the ultimate outcomes to Members.

As with any modelling process, it is expected that experience would inform the modelling approach and the specific assumptions applied. We did not evidence ongoing refinement of the model and assumptions used, based on experience analysis of the outcomes achieved from previous partnerships. This raises doubts that the Partnership Spend Assessment Framework is accurately estimating the expected outcome of a specific industry partnership.

Recommendations

Recommendation 3.1: Uplift the Partnership Proposal (and related material under the BFID Framework) to include specific guidance on:

- a) How the expenditure aligns to the BFID Framework, Partnership Agreements Policy and other related policies and frameworks.
- b) The application and categorisation of expenditure.



- c) How the expenditure aligns to the Trustee' relevant financial year Corporate Plan (including strategic objectives).
- d) The funding requirements, including the source of funding.
- e) The assessment criteria including:
 - (i) What outcomes, with reference to quantitative and qualitative data, the agreement is intended to achieve?
 - (ii) What outcomes have been achieved for the previous year, for renewals?
 - (iii) How these outcomes will be monitored?
 - (iv) Relevant executives' assessment on whether the expenditure meets the BFID requirements and is in the Best Financial Interest of Members.
- f) The roles and responsibilities for those who should be involved in the preparation of Partnership Proposals, including ongoing lifecycle oversight and monitoring of the subsequent Partnership Agreement and Benefit Schedule. This should include responsibility for consultation, review and recommendation for approval.
- g) The process for monitoring and documenting the expected outcomes of the partnership expenditure.

Recommendation 3.2: Uplift the Partnership Spend Assessment Framework to provide specific guidance on the methodology, assumptions and rationale for the assessment process. This would support key knowledge transfer over time periods and roles. The specific guidance should include:

- a) The purpose of the framework and how it interacts with the wider Partnership Agreements Policy and BFID arrangements of the Trustee.
- b) An explanation of the methodology and how it is aligned to BFID.
- c) An emphasis that the Member benefit is the core focus with linkage to specific Member outcomes and the Trustee's strategic objectives.
- d) Sensitivity analysis to understand how the expected value of the partnership may vary in different scenarios.
- e) Defined quantifiable measures of success and how this will be monitored over time.
- f) The drivers for specific assumptions, how these may change over time periods and for different partnerships.
- g) The requirement that key assumptions are driven by data insights and historical references, that are specific to the partnership being considered.
- h) How assumptions can be validated and tested across time periods and partnerships.
- i) Details of how to use the Partnership Spend Assessment Framework template to ensure consistency in approach across partnerships.



- j) Identification of the framework owner, including associated roles and responsibilities so that the benefit assessment processes are undertaken in a consistent manner, regular reviews of the overarching assessment framework are undertaken and that findings are dealt with in a timely manner.

Recommendation 3.3: Define and document a formal review process for the Partnership Spend Assessment Framework. The formal review process should consider both technical accuracy and alignment to the BFID obligations. An independent review should also be undertaken at agreed, regular intervals.

Recommendation 3.4: Include the Partnership Spend Assessment Framework as part of the fund level model review, or equivalent, process.

6.1.3 Partnership Agreement and Benefit Schedule

Context

The benefits section within the Partnership Agreement and accompanying Benefit Schedule delineates benefit channels (such as advertising and promotion, events, and access) and specifies the details of these benefits (outlining the particulars of the respective event or promotion).

The Partnership Proposal incorporates a legal review to evaluate compliance with the Sole Purpose Test and the BFID requirements, based on the benefits outlined in the Partnership Agreement and Benefit Schedule.

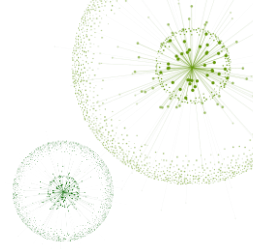
The Partnership Agreement and Benefit Schedule is appended to a completed Partnership Proposal upon submission to the relevant recommending executive and/ or the IPRC for evaluation and recommendation to the CEO.

Finding

Alignment of benefits provided to member outcomes requires uplift.

The documented benefits in the Partnership Agreement and accompanying Benefit Schedule from the industry partnership expenditures reviewed include the following:

- Direct member marketing including access via events, worksites;
- Attendance at CFMEU member day picnics;



- Direct interaction with CFMEU delegates via delegate training sessions and meetings;
- Participation in the CFMEU annual delegates' Christmas party;
- Reservation of tables (two tables of 10) at the CFMEU Grand Final Breakfast.

A review of the expenditure decisions, and related benefits, revealed an absence of clearly articulated Member outcomes resulting from the documented benefits. The Directors and Executives interviewed had a shared understanding that the benefits provided under the Partnership Agreements were to enhance advocacy for Cbus' brand, thereby increasing access to Members and leading to greater Member acquisition and retention for Cbus.

While there is a shared understanding of the benefits of Partnership Agreement's, the benefits outlined in the Partnership Agreements and accompanying Benefits Schedule are not sufficiently detailed to effectively demonstrate the benefits that Partnership Agreement's deliver to improve members outcomes. This would enable the IPRC to substantiate BFID compliance during the approval process and mitigate potential misinterpretation and scrutiny.

Recommendations

Recommendation 4.1: Update the Partnership Proposal and Benefits Schedule to enable the incorporation of relevant qualitative and quantitative metrics for each of the benefit channels. This update should enable effective measurement and monitoring of the financial benefits received or not received that are detailed within the Benefit Schedules to Partnership Agreements.

Recommendation 4.2: Update the Partnership Agreements Policy (or an associated procedure document) with guidelines on how to apportion relevant qualitative and quantitative metrics (including dollar value) for each of the Benefit Channels within the Benefit Schedule and Partnership Proposal to enable the monitoring of financial benefits received or not received during the benefit period.

6.1.4 Ongoing Assessment and Monitoring of Partnership Agreements

Context

As outlined above, the Partnership Agreement and Benefit Schedule is appended to a completed Partnership Proposal upon submission to the relevant approving executive and/ or the IPRC for evaluation and recommendation to the CEO.

The benefits section within the Partnership Agreement and Benefit Schedule delineates benefit channels and specifies the details of these benefits for ongoing assessment and monitoring.



Findings

There should be Member outcome related metrics embedded into Partnership Proposals to adequately monitor the success of the Partnership Agreements.

While the Partnership Proposals detail a benefit assessment for each partnership, the Review's observations in the 'Proposal and supporting analysis' section above indicate that the assessment lacks the following:

- There is no clear identification of metrics, or Member outcomes anticipated from the expenditure decisions and execution of the Partnership Agreement;
- The Benefit Assessments do not consider the reasonableness of specific assumptions used, or the sensitivity of the assessment to changing assumptions;
- There are no statements regarding whether the funding is within the approved budget.

As a result of the above deficiencies, it is challenging to effectively:

- Monitor and report on how the expenditure is progressing towards achieving the stated Member outcome of the Partnership Agreement;
- Assess and adjust metrics and assumptions based on the Partnership Agreement in comparison to the success of other marketing campaigns and partnership arrangements;
- Appropriately assess whether the specific Partnership Agreement, or the overall portfolio of industry partnerships, continue to meet the BFID requirements (particularly to determine if the relevant agreement should be renewed or discontinued).

There is inconsistent and incomplete information provided within the Partnership Agreement Pulse Checks and End of Period Assessments.

The Partnership Agreement and Benefit Schedule for the CFMEU-related Expenditure Decisions (subject to this Review) typically spanned a period of two years, resulting in fees paid in advance by Cbus.

Where the partnership fee is paid in advance, the Partnership Agreement and Benefit Schedule outlines the process to follow if any benefits are not delivered or performed as specified. This includes either providing a substitute benefit of equal value, as assessed by the Trustee, or refunding the pre-paid partnership fee corresponding to the unrealised benefit. The benefits outlined in the schedules do not have specific dollar values of partnership fees attributed to each category of benefit. Consequently, if the benefits have not been provided, it would be challenging to determine the appropriate dollar value for refunds or deductions from the next financial year's partnership fee if the Partnership Agreement is renewed.



Ongoing assessments:

In any given financial year, the following checks are performed for each Partnership Agreement and accompanying Benefit Schedule:

- Pulse Check or mid-year assessment of the benefits undertaken for the first six months;
- End of Period Assessment which includes comments on the delivery of the benefits outlined in the Benefit Schedule, including feedback from teams such as marketing.

The recently documented *Industry Partnership – Process Handbook*, states that the purpose of a Pulse Check “...is to maintain a line-of-sight on how the partnership implementation and fulfilment is tracking and to mitigate any issues which may have arisen in these areas. The pulse check is: Light touch, conducted via phone, email or Teams, Performed separately with both the Partner and relevant, internal staff”.

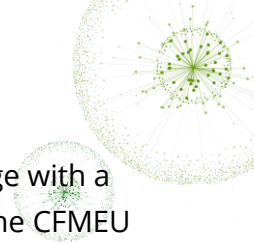
The End of Period Assessment adds to the process with an assessment against an ‘Implementation Rating’ and an ‘Advocacy Rating’ that is completed by the Marketing team, Growth SEEM/Workplace Services team, Public/Corporate Affairs, Investment Relations and Partnerships team.

The Review found information related to Pulse Checks and End of Period Assessments (for the Partnership Agreements and Benefit Schedules subject to examination) were incomplete and inconsistent. Matters missing or incomplete included:

- Who completed the Pulse Check and End of Period Assessment;
- Whether the benefits were provided, or provided to the extent originally set out in the Partnership Agreement and Benefit Schedule;
- Whether refunds or deductions from subsequent renewal Partnership Agreement values (commensurate with the value of benefits not provided) should occur, or have occurred;
- Any tracking of risks identified during the proposal process or a documented review identifying new risks or potential conflicts that may have arisen during the period;
- Sections of the Pulse Check and End of Period Assessment, which had not been completed by all relevant parties.

The Review also identified instances where the Trustee was unable to verify that the benefit in the Partnership Agreement and Benefit Schedule had been provided or that, where the benefit had not been provided, that partnership fees had been refunded or reduced accordingly. For example:

- A Cbus promotion post to be shared by CFMEU on their Facebook page lacked documented verification, relying on verbal confirmation from the CFMEU delegate;
- Commentary from a Cbus coordinator completing an assessment did not include evidence that the benefit under the Partnership Agreement and Benefit Schedule had been provided, assuming completion without evidence;



- An instance where the CFMEU website was to include the Cbus brand on the home page with a link to Cbus and the Cbus coordinator contact details. The assessment indicated that the CFMEU had not implemented this benefit and recommended moving the information to an existing webpage. The renewal assessment section noted that the CFMEU website would be updated in the next six months. The final recommendation was to renew the partnership for another 12 months, no consideration was evidenced regarding adjusting the benefits payable to the CFMEU.

Within the assessment template, there are sections for commentary following a partner meeting and Pulse Check. The commentary in the assessments reviewed indicated active discussions with the CFMEU regarding the provision of benefits and actions to address any benefits not on track. However, some assessments lacked clarity on whether the final benefits were provided even after these discussions.

The End of Period Assessment also includes a renewal assessment outcome. This involves feedback from the Marketing Team and the relevant Cbus coordinator, which focuses both on checking that the benefits have been provided and understanding the Trustee's view of the advocacy provided for Cbus with the relevant delegate. The assessment does not use any quantitative metrics to test delivery of benefits nor attempt to confirm what outcomes were achieved because of the benefit provided. The assessment process is more focused on the benefits being delivered by partners rather than the ultimate outcome to Members.

Annual reporting requirements:

For most of the Partnership Agreements and Benefit Schedules reviewed (except the agreements that related to leases or investment research), the Partner (CFMEU) was expected to provide the Trustee with an annual report to assess and measure the benefits provided under the agreements and evaluate the success and suitability of the partnership relationship.

From stakeholder interviews and the document review, Deloitte observed that no formal documented annual report is received by the Trustee from the CFMEU. Instead, it was confirmed that feedback is provided verbally, enabling Cbus to perform the Pulse Check and End of Year Assessment. This reporting should be a key input to assist in monitoring potential risks and mitigating potential conflicts that may arise, such as preferential treatment in managing and monitoring the agreement. Formal documented CFMEU reporting to support the Pulse Check and End of Period Assessment would assist the accountable executive and the IPRC in their decision-making process when renewing these agreements for subsequent years. This is because the reporting would provide a view on whether the prior year's benefits were achieved, including intended Member outcomes.

While the intent of the assessment process is positive, the informal nature in which it is conducted could hinder the ability to determine whether benefits were delivered. More specifically, there is

insufficient information to ascertain if the benefits achieved the strategic objectives and intended outcomes for Members, such as attraction and retention. Additionally, there is a lack of documented evidence confirming whether the payments made by the Trustee to the CFMEU were in line with the benefits received, and whether refunds or replacement of benefits was provided where applicable.

There is a lack of ongoing monitoring for risks and conflicts related to Partnership Proposals.

Risk assessments are conducted during the proposal process for partnership expenditure. These assessments are included in the Partnership Proposal submitted to the relevant executive and/ or IPRC for recommendation and subsequent approval by the CEO.

SPS 515 requires decisions to incur significant fund expenditure to be monitored against their expected outcomes¹¹³ therefore it was expected there would also be active monitoring of risks and conflicts throughout the lifecycle of a Partnership Agreement, including Pulse Checks and/ or End of Period Assessments.

The Review of the Pulse Checks and End of Period Assessments did not identify a process to review the risks initially included in the Partnership Proposals, or a process for consideration of new risks arising during the term of the agreement, as part of these assessments. The risks included in the majority of the Partnership Proposals were related to proceeding or not proceeding with the partnership.

The risk related to proceeding with the partnership were defined by the Trustee to be the following:

- The risk that the benefits are not fully realised, whereby the CFMEU do not provide some or all of the benefits under the Benefit Schedule. Typically, the Trustee's stated risk mitigation strategy to address this was as follows:

"Our agreement requires the partner to provide replacement opportunities of commensurate value or refund Cbus for any activity that did not proceed. The fee is paid in instalments with the first instalment being paid upfront at the beginning of the activity period, and the balance of the annual partnership paid after six months upon confirmation that the benefits during the period have been delivered and that the remaining benefits are on track."

As referred to above, the Review found there to be inconsistent and incomplete checks of the benefits provided as part of the Pulse Check and End of Period Assessment. Furthermore, where benefits had not been provided, there was no attributed value to determine what refund should occur or what commensurate value would suffice. Given the incomplete assessment of the benefits provided by the partners, it is unclear how this risk could be appropriately monitored during the period or at the cessation of a Partnership Agreement.

¹¹³ Australian Prudential Regulation Authority (2019) Prudential Practice Guide SPG 515 – Strategic and Business Planning, <https://www.apra.gov.au/sites/default/files/prudential_practice_guide_spg_515_strategic_and_business_planning_august_2019.pdf>, (accessed 10 October 2024) cl. 19.



- The risk that the partnership agreement does not meet the BFID requirements. Typically, the Trustee’s stated risk mitigation strategy to address this was as follows:

“The business case for this sponsorship package clearly evidences that this agreement delivers financial benefit to members in both brand value and member benefit value. The model used to calculate member benefit takes into account a number of variables including the reach of the partners organisation, how well it advocates for employers and their staff to join the fund, the partners past performance and the impact that the partnership activities are likely to have on Fund membership.”

The risk assessment goes on to say the CFMEU activities support the sustainable growth of the building and construction industry, and that the realisation of financial benefits will be monitored during the term of this agreement to ensure it has delivered the anticipated benefits.

The Review found that quantifiable measures of success e.g., the number of Members acquired or retained through the partnership, or the expected outcomes to Members, are not actively monitored as part of the Pulse Check and End of Period Assessment. We note that the Pulse Check and End of Period Assessment are key inputs into subsequent period renewals and would therefore expect that the intended outcomes of the Partnership Agreement in terms of Member outcomes would be considered through this, or a related process. Given the expected outcomes to Members are not identified as part of the Partnership Proposal, it is unclear how this risk could be appropriately monitored during the period of a Partnership Agreement.

In addition, there was a stipulation in the Partnership Agreement and Benefit Schedules that:

“If the Partner becomes aware of any conflict of interest or possible conflict of interest affecting the Partner or the Partner personnel in the conduct of its obligations under the Partnership Agreement, the Partner must immediately advise Cbus in writing in which event Cbus may request that the Partner take action to rectify the conflict and/ or immediately terminate the Partnership Agreement.”

The Review did not find any requirements for active monitoring of conflicts identified in the proposals nor ongoing assessment of new conflicts as part of the Pulse Check or End of Period Assessment.

Recommendations

Recommendation 5.1: Uplift the assessment template to support robust oversight and monitoring of the benefits and the intended Member outcomes of the Partnership Agreements and Benefits Schedule. Include sections for:

- a) The reconciliation of the performance against the Benefits Schedule for both the Pulse Check and End of Period Assessment, allowing for clear articulation of benefits not provided in the



relevant period and their dollar value including, provision of refunds or alternatives commensurate with the previous benefit dollar value.

- b) The outcomes of the review of the risks and conflicts of each Partnership Agreements and Benefits Schedule, including identification and management of any new risks and/ or conflicts.
- c) Quantitative metrics, including the benefits provided and attribution to the expected Member outcomes, which will ultimately support in completing subsequent renewal Partnership Proposals.

Recommendation 5.2: Within the Partnership Agreements Policy, or associated procedure, include specific process and guidelines in relation to monitoring of benefits, conflicts and risks as part of the Pulse Check and End of Period Assessment. This should include:

- a) Conducting active and visible monitoring of benefits, conflicts and risks as part of the Pulse Check and End of Period Assessment.
- b) Reconciliations to be undertaken to assess performance against the Benefits Schedule for both the Pulse Check and End of Period Assessment.
- c) When benefits have not been provided (in line with the Benefit Schedule) in the relevant period, including documenting the provision of refunds or alternatives commensurate with the benefit dollar value.
- d) Documenting quantitative metrics benefit received for individual Partnership Agreements to support the renewal assessment and attribution to the expected Member outcomes at an individual and portfolio level.

Recommendation 5.3: Uplift the benefits section within the Partnership Agreement, Benefit Schedule and Partnership Proposal to incorporate the dollar value attributable to each benefit channel, enabling effective monitoring of benefits to be paid or refunded.

Recommendation 5.4: Uplift the Partnership Agreements to include a requirement for formal documented reporting and attestations from partners (including CFMEU) at the Pulse Check and End of Period Assessment points, to facilitate robust reconciliation and validation of the benefits provided. Reporting should include details of benefits provided and where the benefit has not been provided, their dollar value including, provision of refunds or alternatives commensurate with the previous benefit dollar value.



6.1.5 Governance and Reporting of Industry Partnership Expenditure Decisions

Context

The Trustee needs to have robust systems and processes in place to ensure they have considered, and continue to assess, all relevant factors for industry partnership expenditure, supported by sufficient evidence, at the initiation of an industry partnership, through the term of the industry partnership and at renewal.

Monitoring and reporting from Management to Board Committees and then to the Board, should provide ongoing analysis and commentary as to how, at both an individual and at a portfolio level, the relevant industry partnerships are tracking to achieve Member outcomes and the Trustee's strategic initiatives. Without robust monitoring and reporting through these stakeholders, it is difficult for the Trustee to evidence that the relevant agreements meet and continue to meet the BFID requirements.

When making expenditure decisions, trustees should assess the costs and benefits of specific expenditure, including the quantifiable metrics to demonstrate the anticipated financial outcome for Members. The consideration of the BFID should also be documented within the relevant Management, Board Committee, and Board papers and minutes.

Actions taken by trustees will differ depending on the quantum, complexity and duration of the partnership agreement. The detail in the supporting analysis would be expected to reflect all aspects of a particular decision.

Given the significance, discretionary nature, current regulatory environment and scrutiny facing industry partnership expenditure, we would expect to see a highly governed process commensurate with risk, including:

- Quantitative metrics to support the IPRC and MEGC expenditure decision making in line with the BFID requirements;
- Relevant decision-making at the right levels, for example, the IPRC recommending the MEGC approve new industry partnership agreements and material changes to partnership agreements (with the IPRC and CEO approval of renewal and immaterial change decisions); and
- Robust oversight and monitoring practices through comprehensive reporting from the IPRC to the MEGC, and from the MEGC to the Board.

Findings

Uplift the approval process for industry partnership expenditure.

From Deloitte's review of the Partnership Agreements Policy, individual Partnership Proposals with a value of \$75,001 or more, are reviewed by the IPRC, a Management committee, and approved by the

CEO. The Heads of or Senior Managers review expenditure proposals below this threshold and approvals are provided by the Senior Manager of Industry Partnership or the Chief Member Officer.

Deloitte's review also noted that the MEGC's role "...is to assist the Board in the oversight and implementation by the Fund of material strategies and operational matters and systems which are relevant to the delivery of member and employer products, services, benefits and organic growth." The MEGC is also responsible for ensuring that Cbus' Member and employer strategies align to its strategic objectives. The MEGC's key responsibilities include the oversight, review and recommendation of the strategic objectives, including regularly monitoring Member acquisition, retention and optimisation results. The MEGC also reviews and approves the Trustee's annual industry partnership program and changes to the Partnership Agreements Policy. The MEGC does not currently review and/ or approve individual industry partnership expenditures.

From stakeholder interviews, and an examination of the annual report on the industry partnership program, Deloitte understand the governance construct outlined above exists, in part, to manage potential conflicts of interest and duties i.e., so no Directors are involved in the negotiation or approval of partnership agreements where they are affiliated with the partner organisation. In Deloitte's opinion these conflicts can be managed with the appropriate protocols, as recommended in the Fit and Proper section of this Report. Deloitte's view is that uplift of the governance for industry partnership expenditure decisions is required to provide that the MEGC approve new industry partnership agreements and material changes to partnership agreements, with the IPRC and CEO approval of renewal and immaterial change decisions. This uplift in the governance process, should also include a requirement for an independent Director be appointed as the Chair of the MEGC.

The potential conflict of interest that arises by virtue of a nominated Director acting as Chair of the MEGC is when an expenditure decision is required, and it is related to the same nominating entity. Despite there being multiple mechanisms available to maintain the integrity of decision-making, such as an individual recusing themselves from the decision and/ or leaving the room during discussion and voting; to aid transparency, address conflicts and manage the heightened regulatory scrutiny facing industry partnership expenditure, it is suggested that better practice would be to have an independent Director in the Chair role.

Uplift the Board oversight of industry partnership expenditure.

The Review noted that the Board's oversight of industry partnership expenditure includes reviewing industry partnerships at a program level as part of the annual budget, an annual report from the IPRC to the MEGC and a report from the MEGC Chair to the Board.

The annual report submitted by the IPRC to the MEGC provides an assessment overview of the industry partnerships program. The report is to support the MEGC to review and approve the Fund's annual industry partnership program for another year. The IPRC report provided to the MEGC in March 2024 included an overview of:



- The industry partnerships program for FY23, up to and including February 2024, including the number of events and brand and advertising opportunities;
- The industry partnership program plan for the coming year, including costs and benefits at a portfolio level;
- Key operational considerations;
- The industry partnership program's risks and controls;
- A list of all new, proposed or potentially retired industry partnership agreements for the following financial year, across employer, member and apprentice categories, segmented by partner organisations and state;
- A summary of the previous periods industry partnership estimated value;
- A review of activities over the period, including what activities the IPRC had undertaken to review the partnerships and metrics in relation to 'Member Engagement' and 'Total members with a balance' targets and outcomes; and
- The expected impact of member retention on profit based on financial services research.

The IPRC report did not:

- Set out the quantitative attribution for the 'Member Engagement' and 'Total members with a balance' targets and outcomes for specific industry partnerships; or
- Provide an outline of the tangible financial member outcomes achieved, for example, lower costs, fees, improved benefits.

There is a focus on the qualitative assessment of the ability of the industry partnership program to support with the growth, acquisition and retention of Members, strengthening the brand, building trust with employers and Members, etc. However, the lack of requisite quantitative metrics and the tangible financial member outcomes results in insufficient information to enable the MEGC to decide whether the Trustee's strategic objectives, and outcomes to Members, were achieved. This additional information would then be appropriately included in the considerations by the MEGC to determine whether to approve the industry partnership program for the following financial year. This Review does acknowledge that the difficulties with the attribution of marketing success outcomes is not specific to Cbus or the superannuation industry, but the financial services sector in general.

To demonstrate that the BFID requirements are being met it is important for trustees to keep clear records of the decision-making process for expenditure decisions and to have strong systems and processes in place to ensure they can point to relevant evidence. The minutes of the IPRC meetings reviewed do not record how the expenditure outlined in the proposals meet the members best financial interests.

From stakeholder interviews conducted, the Review understands the budget setting process changed this year with the CEO submitting a funding assessment for FY25/26 year to the Audit and Finance Committee for consideration and recommendation to the Board for approval. However, the Audit and

Finance Committee referred the funding assessment back to the MEGC, which has the relevant delegated authority, for initial review prior to submission to the Audit and Finance Committee for recommendation to the Board for approval. Deloitte understood that this process will be refined for the FY26/27 year.

Due to insufficient information and infrequent reporting (annually only) to the MEGC and to the Board, the ability of the MEGC and the Board to adequately monitor and oversight industry partnerships is impacted. This includes the ability to determine whether both individual industry partnerships, and the industry partnership program, are on track to deliver or have delivered the attributed member outcomes and continue to be in Members' best financial interests.

Recommendations

Recommendation 6.1: Incorporate within the Partnership Agreements Policy, and in relevant Management Committee and Board Committee Charters, requirements or Board delegations, where applicable, for:

- a) The IPRC and CEO to recommend proposals for new Partnership Agreements and material changes to Partnership Agreements, regardless of the value of the expenditure, to the MEGC for approval.
- b) The IPRC and CEO to approve renewals of Partnership Agreements and immaterial changes to Partnership Agreements.
- c) The MEGC to approve proposals for new individual Partnership Agreements regardless of the value of the expenditure and material changes to Partnership Agreements.

Recommendation 6.2: Amend the Board Charter, MEGC Charter, and related governance documents, to include a requirement for the Chair of the MEGC to be an independent Director.

Recommendation 6.3: Uplift the reporting from the IPRC and CEO to the MEGC, and increase the frequency, to provide comprehensive quarterly reporting which includes:

- a) An overview of the Pulse Check and End of Period Assessments results for all Partnership Agreements, including analysis of qualitative and quantitative metrics to support overall performance, tracking against or achievement of the stated Member outcome and strategic initiatives, any identified breaches and actions to remediate (if applicable).
- b) All Partnership Agreements that have been renewed including a summary of the completed assessment which supported the renewal, the partner performance over the period (with an



analysis of qualitative and quantitative metrics) and confirmation as to whether the stated Member outcomes of the Partnership Agreement during the prior period were achieved.

Recommendation 6.4: Uplift the reporting from the MEGC to the Board on a quarterly basis, to include:

- a) A summary of all new Partnership Agreements, renewed Partnership Agreements and Partnership Agreements which have materially changed, which were approved by either the IPRC and CEO or the MEGC during the quarter. This includes an overview of the assessment, and relevant metrics, supporting how the stated Member outcome would be achieved and how it is in Members' best financial interests.
- b) A summary of all current Partnership Agreements, including the qualitative and quantitative metrics to support the performance of the partner against the Partnership Agreement and Benefits Schedule (with tracking against or achievement of the stated Member outcome and strategic initiative).

6.2 Scope Area #9: Assessment of Past Expenditure Decisions

Context

As outlined in **Appendix C** of the Report, Deloitte was asked to review whether Expenditure Decisions were made for the sound and prudent management of the Trustee's business operations, including whether the:

- Stated benefit of any arrangement or contract was obtained by the Trustee;
- Expenditure achieved its intended purpose;
- Goods or services to be delivered were obtained by the Trustee;
- Expenditure provided fair value for beneficiaries of the Fund; and
- Stated metrics, if any, set during the BFID assessment were met.

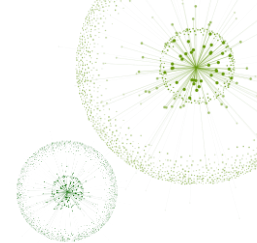
Finding

While it is clear that the Trustee has made decisions regarding the expenditures in scope of this Review, and that there are frameworks, processes, and tools to varying degrees of efficacy in place, there are deficiencies in governance and in operationalising the BFID requirements. These deficiencies were such that there was insufficient information available to Deloitte to conclude whether the Expenditure Decisions were made for the sound and prudent management of the Trustee's business operations and achieved intended purpose and stated benefit.

The failings in the design and operation of the BFID Framework and associated policies and frameworks related to the BFID (refer to Figure 1) are outlined in the observations and recommendations in **section 6.1**.

Recommendation

Recommendation 7.1: The recommendations (2.1 to 6.4) as detailed above and explained in **section 6.1** of this Report, provide for a systemic uplift in the ability of the Trustee to make decisions in line with the BFID requirements. Once these recommendations have been actioned, the Trustee should review and reassess the past Expenditure Decisions which have been the subject of this Review.

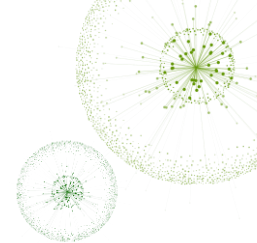


APPENDIX A: GLOSSARY AND KEY TERMS

Outlined below are key terms and acronyms used throughout this Report.

Acronym	Term
AIST Framework	Australian Institute of Superannuation Trustees' Framework for Best Financial Interest Duty
APRA	Australian Prudential Regulatory Authority
ASIC	Australian Securities Investment Commission
BFID	Best financial interests duty as set out in section 52 of the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)
Board	The Board of Directors of United Super Pty Ltd
Cbus	Construction and Building Unions Superannuation Fund
CFMEU	Construction, Forestry and Maritime Employees Union
Corporate Plan	Strategic Plan, including Strategic pillars and objectives, Business Plan and Financial Plan
Deloitte	Deloitte Touche Tohmatsu
Directors	Members of the Board of Directors of United Super Pty Ltd
Equal Representation Model	Governance model enabled by section 89 of the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth) that provides for the board of a trustee to consist of equal numbers of employer and member representatives
Expenditure Decisions	All expenditure decisions (including but not limited to financial obligations, arrangements and contracts) of the RSE Licensee connected with the CFMEU that were in effect or being made as at 1 June 2024
Explanatory Memorandum	Explanatory memorandum of the <i>Treasury Laws Amendment (Your Future, Your Super) Bill 2021</i> (Cth)
Fund	Construction and Building Unions Superannuation Fund
Member	Current members of the Construction and Building Unions Superannuation Fund, including beneficiaries
MySuper	Default superannuation accounts for individuals who do not choose their own investment options
Prices and Incomes Accord	A series of agreements in the 1980s and 1990s between the Australian Labor government and the Australian Council of Trade Unions (ACTU),

	which focused on improvements in workers living standards through social benefits
Report	This document, containing the output from the independent review conducted by Deloitte
Review	Refers to the independent review conducted by Deloitte
Royal Commission	Refers to the 'Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry' that was established on 14 December 2017
RSE	Registrable Superannuation Entity
RSE Licensee	Registrable superannuation entity that is authorised to operate a superannuation fund in Australia
SIS Act	Refers to the Superannuation Industry (Supervision) Act 1993 (Cth)
SPS 515	Prudential Standard SPS 515 Strategic Planning and Member Outcomes
SPS 520	Prudential Standard SPS 520 Fit and Proper
Sole Purpose Test	Section 62 of the SIS Act which requires that a superannuation fund is maintained only for the purpose of providing benefits to its members upon their retirement, or for beneficiaries if a member dies
Trustee	United Super Pty Ltd as trustee for the Construction and Building Unions Superannuation Fund
YFYS Act	Refers to the <i>Treasury Laws Amendment (Your Future, Your Super) Act 2021</i>



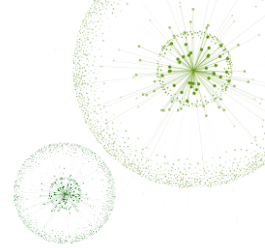
APPENDIX B: FIGURES AND TABLES

Outlined below are the figures located within this Report.

Figure #	Description	Page
Figure 1	Snapshot of policy and framework structure related to the BFID at Cbus	55
Figure 2	Assessment approach deployed by Cbus to value an industry partnership	64

Outlined below are the tables located within this Report.

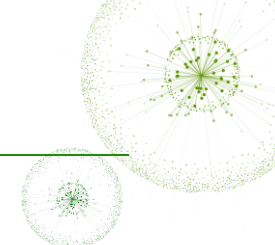
Table #	Description	Page
Table 1	Summary of Review recommendations	8
Table 2	Comparison of superannuation fund types in Australia	15
Table 3	Better practice proposal and oversight/ monitoring practices	31
Table 4	Review area as per the additional licence conditions	35



APPENDIX C: AGREED SCOPE AREAS AND ACTIVITIES

Outlined below are the scope area and activities agreed with APRA on 11 October 2024.

APRA additional license condition Independent Review scope	Deloitte scope	Deloitte activities	Proposed high-level assessment criteria
1 Fit and proper (F&P) review			
<p>6(b)</p> <p>Review of the adequacy of Cbus' policies and procedures in relation to F&P.</p> <p>Testing type: Design effectiveness</p>	<p>(F1)</p> <p>Design of F&P arrangements</p>	<p><i>Document review</i></p> <ul style="list-style-type: none"> • Review key documents to understand and assess Cbus' F&P arrangements, how they have changed or been improved over the last year and how they align to the broader governance and risk management structures, including documentation of decisions. • Review key documents to understand the application of fit and proper processes for individuals that are directors and officers as defined by SPS 520. The in-scope directors and officer include: <ul style="list-style-type: none"> ○ directors and officers as of 13 August 2024; ○ current directors and officers as at the time of the review, including nominated directors not yet approved. <p>Refer to Appendix B for the individuals captured as in-scope directors and officers.</p>	<ul style="list-style-type: none"> • The F&P arrangements, including relevant policies and procedures, meet the requirements of APRA's SPS 520 – Fit and Proper and APRA's SPG 520 – Fit and Proper, including identification and requirement of relevant information, defined assessment criteria, and regulator notification processes. • There is adequate and appropriate governance and record keeping arrangements in relation to F&P assessments, including responsibility and accountability for the F&P process and its outcomes.



<p>6(a)</p> <p>Review of all of the processes undertaken by Cbus in assessing whether all of the directors and officers of Cbus are fit and proper in compliance with F&P.</p> <p>Testing type: Design effectiveness</p>		<p><i>Interviews</i></p> <ul style="list-style-type: none"> • Interview key personnel to understand the foundations and applications of F&P in general, including how Cbus’ F&P process works in practice and any recent changes to the F&P arrangements. • Interview key personnel to understand the process that was followed for the most recent F&P assessment for in-scope directors and officers. 	
<p>6(c)</p> <p>Whether the current directors and officers of the RSE Licensee:</p> <p>(i) were fit and proper at the time they were last assessed by Cbus; and</p> <p>(ii) remain fit and proper in compliance with F&P as at the date of the Review.</p> <p>Testing type: Implementation effectiveness</p>	<p>(F2)</p> <p>Reperformance of F&P assessments</p>	<p><i>Document review</i></p> <ul style="list-style-type: none"> • Review information obtained as part of the most recent F&P assessment, including a review of conflicts and conflict management plans for directors. • Conduct, where required, additional investigations such as a search of media articles and other publicly available information. <hr/> <p><i>Assessment</i></p> <ul style="list-style-type: none"> • Re-perform the F&P assessment and determine if the in-scope directors and officers would be considered F&P based on that information. • Compare the result of our re-performance of the F&P assessment to the previous assessment conducted by Cbus to identify any differences and critically assess the outcomes of the Cbus F&P process. 	<ul style="list-style-type: none"> • The F&P assessment was in line with Cbus’ existing F&P process and criteria and conflicts were appropriately identified and the conflict management plans were adequate and in line with SPS 520. • The in-scope directors and officers would be considered F&P based on the information available at the time of the F&P assessment, the criteria set out in SPS 520, SPG 520 and better practice.
	<p>(F3)</p>	<p><i>Document review</i></p> <ul style="list-style-type: none"> • Obtain and review F&P assessment information for current directors and 	<ul style="list-style-type: none"> • The in-scope directors and officers remain F&P based on the information available at the time of our review and

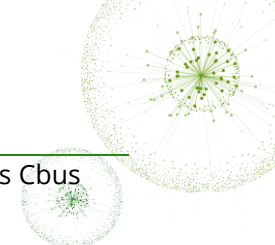


Conduct F&P assessment	<p>officers at the time of the Review, including a review of conflicts and conflict management plans.</p> <hr/> <p><i>Interviews</i></p> <ul style="list-style-type: none"> • Interview key personnel, including directors and officers, to gather relevant information to understand how they are F&P. <hr/> <p><i>Assessment</i></p> <ul style="list-style-type: none"> • Perform our own F&P assessment for current directors and officers at the time of the review based on information obtained and interviews conducted and our methodology for assessing F&P. 	<p>the criteria set out in SPS 520, SPG 520 and better practice, including conflicts and conflict management plans are adequate and in line with SPS 520.</p>
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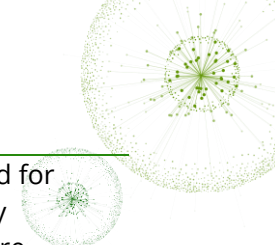
2 | BFID review - scope is limited to all Expenditure Decisions of the RSE Licensee connected with the CFMEU that were in effect or being made as at 1 June 2024. The areas of review outlined below include, an assessment of:

- current BFID documents and supporting tools (where relevant); and
- current CFMEU related expenses with regard to experience of similar CFMEU expenses, where they exist, in the past 3 years.

6(e)	(B1)	<i>Document review</i>	<ul style="list-style-type: none"> • The BFID framework, policy and procedures are in line with <i>Treasury Laws Amendment (Your Future, Your Super) Act 2021</i>, accompanying Explanatory Memorandum, SPS 515 and SPG 515 Strategic Planning and Member Outcomes (in combination referred to as “BFID requirements”). • Cbus’ BFID framework, policy and procedures, and supporting governance arrangements, Delegations Framework and Conflicts of Interest Policy:
<p>Review the adequacy of the RSE Licensee’s policies and procedures in relation to Expenditure Decisions and whether those policies and procedures meet the RSE Licensee’s obligations under BFID.</p> <p>Testing type: Design effectiveness</p>	Design of BFID arrangements	<ul style="list-style-type: none"> • Review BFID framework, policy and procedures and related training undertaken by the business, risk and compliance teams and key personnel responsible for the implementation of initiatives that require an Expenditure Decision. <p><i>Interviews</i></p> <ul style="list-style-type: none"> • Interview key personnel, including directors and officers (where relevant), to understand the documents reviewed and key personnel’s understanding of frameworks, policy and procedures and how these are applied in BAU. 	



			<ul style="list-style-type: none"> ○ has been embedded across Cbus (can be evidenced); and ○ meets the RSE Licensee’s obligations and intent under the BFID requirements (non-legal review).
<p>6(d)(ii)</p> <p>Review of the identified purpose of the Expenditure Decisions, including how the expenditure would contribute to the RSE Licensee meeting its strategic objectives.</p> <p>Testing type: Operating effectiveness</p>	<p>(B2)</p> <p>Purpose of expenditure</p>	<p><i>Document review:</i></p> <ul style="list-style-type: none"> • Review the relevant documentation to understand the approach taken to identify the purpose of the initiative to implement the Expenditure Decision. <p><i>Interviews</i></p> <ul style="list-style-type: none"> • Interview key personnel, including directors, officers, managers and staff (where relevant), involved in the development, approval or implementation of the initiative to implement the expenditure decisions to further understand documents reviewed and expenditure decision and process undertaken. 	<ul style="list-style-type: none"> • The Business Case and relevant management executive committees, Board Committee and/ or Board papers are in line with BFID requirements and clearly set out: <ul style="list-style-type: none"> ○ the identified purpose of the expenditure, including any benefit to be obtained by the RSE Licensee; ○ the scope of the initiative to be undertaken to implement the Expenditure Decision; ○ how the identified purpose of the expenditure would contribute to the RSE Licensee meeting its strategic objectives; ○ due consideration of financing approach, advice from internal teams and/ or external third parties, conflicts (conflict treatment plan) and risks; ○ adequate information to support the expenditure decision with respect to members’ best financial interest; and ○ whether the initiative expenditure decision considers previous expenditure made to the CFMEU



			<p>and the outcomes achieved for members as a result of any previous similar expenditure decisions, where they exist, in the past three years.</p>
<p>6(d)</p> <p>Review what metrics, measures or alternatives (if any) were used to assess whether the expenditure would reasonably achieve its intended purpose and was consistent with BFID.</p> <p>Testing type: Operating effectiveness</p>	<p>(B3)</p> <p>Defined measures of success</p>	<p><i>Document review</i></p> <ul style="list-style-type: none"> Review documentation which defines the member outcome expected to be achieved from the initiative to implement the Expenditure Decision, including details on the quantification of outcomes, at a membership level and specific cohort level. Review any accompanying cohort and data analysis (including qualitative and quantitative data sets) that was utilised to support the initiative to implement the Expenditure Decision achieving its intended purpose and being consistent with the BFID requirements. <p><i>Interviews</i></p> <ul style="list-style-type: none"> Interview key personnel involved in the data analysis for the initiative to implement the Expenditure Decision to further understand documents reviewed and expenditure decision and process undertaken. 	<ul style="list-style-type: none"> The business, responsible for the initiative to implement the Expenditure Decision, defined the member outcome expected to be achieved and supported this with appropriate cohort and data analysis to assess, if the initiative: <ul style="list-style-type: none"> would reasonably achieve its intended purpose; and would meet the BFID requirements. If, as part of the quantitative analysis, any cohorts were would potentially be adversely impacted by the initiative, an explanation of why this initiative/expenditure is still consistent with BFID requirements at a membership level and how the impacted cohort would be managed if the business case was approved If the approach for undertaking the quantitative analysis (including methodology and assumptions) and supporting tools are fit for purpose and reasonable for the given expenses.
<p>6(d)(i)</p> <p>Review the processes undertaken by the RSE Licensee</p>	<p>(B4)</p> <p>Review the process for making</p>	<p><i>Document review</i></p> <ul style="list-style-type: none"> Review papers and minutes from relevant management executive committee(s), Board Committees and/ or Board meetings 	<ul style="list-style-type: none"> That there was an adequate and appropriate level of discussion and enquiry regarding the initiative to implement the

<p>in relation to the making of Expenditure Decisions.</p> <p>Testing type: Operating effectiveness</p>	<p>Expenditure Decisions</p>	<p>or workshops and any matters arising and actions status, file notes or minutes in relation to inhouse or external discussions regarding the initiative for expenditure.</p> <p><i>Interviews</i></p> <ul style="list-style-type: none"> • Interview key personnel, including directors, officers, managers and staff (where relevant), involved in the initiative to implement the Expenditure Decision to further understand the process undertaken. 	<p>Expenditure Decision at the relevant Board Committee and / or Board so that the Trustee Directors and / or Committee members understood and supported the initiative, including that it would meet the BFID requirements.</p>
<p>6d(iii)</p> <p>Review the oversight arrangements that were implemented by the RSE Licensee to monitor implementation of Expenditure Decisions.</p> <p>Testing type: Operating effectiveness</p>	<p>(B5)</p> <p>Monitoring Expenditure Decision</p>	<p><i>Document review</i></p> <ul style="list-style-type: none"> • Review assurance and/ or oversight sought or undertaken by the business, second line of accountability and/ or third line of accountability, post implementation of the initiative to understand if the intended purpose of the expenditure was being achieved, that the initiative continued to meet the BFID requirements and was being managed and delivering within the approved budget. <p><i>Interviews</i></p> <ul style="list-style-type: none"> • Interview key personnel to understand the assurance and oversight arrangements that existed to monitor the initiative implementation. 	<ul style="list-style-type: none"> • Post approval of the initiative to implement the Expenditure Decision, there was subsequent ongoing review and enquiry, monitoring, oversight and reporting (including from third parties, if relevant) in relation to implementation of the initiative being in line with the original business case and BFID requirements, achieving its intent. • The continual monitoring and oversight included: <ul style="list-style-type: none"> ○ that the initiative was meeting its intended purpose and/ or discussion/escalation occurred if the intended purpose was at risk of not being met. ○ monitoring and treatment of risks and identified conflicts (through the conflict treatment plan) and/ or the raising of new risks (if applicable).



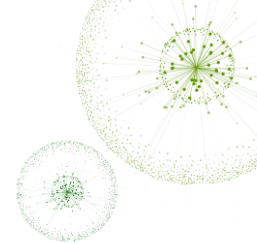
<p>6(d)(iv)</p> <p>Review whether the Expenditure Decisions were made for the sound and prudent management of the RSE Licensee’s business operations, including whether the:</p> <p>(A) stated benefit of any arrangement or contract was obtained by the RSE Licensee;</p> <p>(B) expenditure achieved its intended purpose</p> <p>(C) goods or services (as the case may be) to be delivered under any arrangement or contract were obtained by the RSE Licensee;</p> <p>(D) expenditure provided fair value for beneficiaries of the Construction and Building Unions Superannuation Fund ABN 75 493 363 262; and</p> <p>(E) stated metrics, if any, that were set during the RSE Licensee’s BFID assessment were met.</p> <p>Testing type: Operating effectiveness</p>	<p>(B6)</p> <p>Assessment of past Expenditure Decisions</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • Concluding whether the initiative to implement the Expenditure Decisions were made for the sound and prudent management of the RSE Licensee’s business operations and that it achieved its intended purpose and stated benefit, is expected to be evidenced by the items listed above. 	<ul style="list-style-type: none"> • That the initiative to implement the Expenditure Decisions were made for the sound and prudent management of the RSE Licensee’s business operations and that it achieved its intended purpose and stated benefit, is expected to be evidenced by the items listed above.
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APPENDIX D: DETAILED SUMMARY OF EXPENDITURE DECISIONS

Outlined below is a summary of the Expenditure Decisions considered for this Review.

Expenditure Decision	Effective period	Agreed cost (as per Partnership Proposals) ¹¹⁴
Expenditure 1 – CFMEU NSW (Partnership Agreement)	1 July 2023 – 30 June 2024	\$120,000
Expenditure 2 – CFMEU Vic/Tas (Partnership Agreement)	1 July 2023 – 30 June 2024	\$235,000
Expenditure 3 – CFMEU WA (Partnership Agreement)	1 July 2023 – 30 June 2024	\$74,000
Expenditure 4 – CFMEU SA (Partnership Agreement)	1 July 2023 – 30 June 2024	\$58,000
Expenditure 5 – CFMEU ACT (Partnership Agreement)	1 July 2022 – 30 June 2024	\$54,500 for FY24
Expenditure 6 – CFMEU C&G (Partnership Agreement)	1 July 2022 – 30 June 2024	\$100,000 for FY24
Expenditure 7 – CFMEU Proposal for Investment in Growth Research (Renewables research)	June 2024 – June 2026	\$120,000 per annum
Expenditure 8 – Geelong (Premises Lease)	1 March 2023 – 1 March 2025	Rent of \$13,000 per annum from 1 March 2023 (3% increase taking effect on 1 March 2024)
Expenditure 9 – Perth (Premises Lease)	1 May 2022 to 30 April 2026	Rent of \$138,000 per annum Outgoings (including for example, Local Authority Rates, Utilities and Service Fees etc.) of (approximately) \$61,434.96 per annum

¹¹⁴ Amount excludes Activation Cost of partnerships.



APPENDIX E: IN-SCOPE INDIVIDUALS

Outlined below are the directors and officers that were considered 'in-scope' for this Review. Please note, to be in-scope, the individual needed to be either (1) a director and/ or officer as at 13 August 2024 and/ or (2) current directors and officers as at the time of the Review, including nominated directors not yet approved.

Name	Status	Re-performance of previous Fit and Proper Assessment	Current Fit and Proper Assessment
Hon Wayne Swan	Current member	✓	✓
John Edwards	Current member	✓	✓
Stephen Dunne	Current member	✓	✓
Michelle Beveridge	Current member	✓	✓
Denita Wawn	Current member	✓	✓
Ray Sputore	Current member	✓	✓
Hedley Davis	Current member	✓	✓
Anne Milner	Current member	✓	✓
Abha Devasia	Current member	✓	✓
Earl Setches	Current member	✓	✓
Kade Wakefield	Current member	✓	✓
Jason O'Mara	Former member and nominated director	✓	✓
Dave Noonan	Former member	✓	Out of scope as no longer a member of the Board
Rita Mallia	Former member	✓	Out of scope as no longer a member of the Board
Lucy Weber	Nominated member	Out of scope as not a member of the Board at the time of the previous assessment	✓
Paddy Crumlin	Nominated member	Out of scope as not a member of the Board at the time of the previous assessment	✓

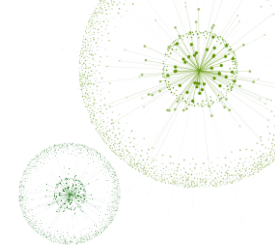


APPENDIX F: SUMMARY OF THE REPERFORMANCE OF THE FIT AND PROPER ASSESSMENT

Outlined below are the outcomes of each check reviewed as part of the reperformance of Cbus’ most recent fit and proper assessment.¹¹⁵

	Wayne Swan	John Edwards	Stephen Dunne	Michelle Beveridge	Denita Wawn	Ray Sputore	Hedley Davis	Anne Milner	Abha Devasia	Earl Setches	Kade Wakefield	Dave Noonan	Rita Mallia	Jason O’Mara
Australian Federal Police Check	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Insolvency Check	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
ASIC Banned and Disqualified Person Register	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
APRA Disqualification Register	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
ASIC Name Searches	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Social Media Checks	No evidence available	Pass	No evidence available	Pass	Pass	Pass	Pass	No evidence available	Pass	No evidence available	Pass	Pass	No evidence available	Pass
Qualifications Check	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Skills Self-Assessment	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Fit and Proper Declaration	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

¹¹⁵ Where no evidence was available to support a particular check, Deloitte conducted its own research to inform the assessment of fit and proper.



APPENDIX G: SUMMARY OF THE CURRENT FIT AND PROPER ASSESSMENT

Outlined below are the outcomes of each check performed as part of the assessment of current fitness and propriety of Cbus' Directors and newly nominated Director candidates.¹¹⁶

	Wayne Swan	John Edwards	Stephen Dunne	Michelle Beveridge	Denita Wawn	Ray Sputore	Hedley Davis	Anne Milner	Abha Devasia	Earl Setches	Kade Wakefield	Jason O'Mara	Paddy Crumlin	Lucy Weber
Insolvency Check	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
ASIC Banned and Disqualified Person Register	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
APRA Disqualification Register	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
ASIC Name Searches	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Social Media Checks	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Qualifications Check	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Skills Self-Assessment	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass
Fit and Proper Declaration or Application Form	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass	Pass

¹¹⁶ Where no evidence was available to support a particular check, Deloitte conducted its own research to inform the assessment of fit and proper.

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