Commission of Inquiry into the CFMEU and Misconduct in the Construction Industry

Tender Bundle

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
1 Martin Place (Level 12), Sydney, NSW 2000
GPO Box 9836, Sydney, NSW 2001

T 02 9210 3000 | W www.apra.gov.au

7 October 2021

Paula Masters
Chair
BUSS(Queensland) Pty Ltd
PO Box 1526
MILTON QLD 4064

Dear Ms Masters,

NOTICE REQUIRING PRODUCTION OF BOOKS UNDER SUBSECTION 255(1) OF THE SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993 (CTH) (SIS ACT)

We refer to the above and **enclose** by way of service a Notice requiring the production of books under subsection 255(1) of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**)(**s 255 Notice**). The s 255 Notice is addressed to you as Chair of BUSS(Queensland) Pty Ltd.

APRA requests that the books be produced via a password protected PDF document sent via email, with the password provided in a separate email to the email producing the books.

The date for production is 11 October 2021. Please contact me at mike.cornwell@apra.gov.au or (02) 9210 3030 if you have any questions.

Yours sincerely

[redacted]

Mike Cornwell
Senior Manager
Superannuation Branch 1

Encl.

Notice requiring production of books
No. 63221

Superannuation Industry (Supervision) Act 1993

To: Paula Masters, Chair of BUSS(Queensland) Pty Ltd ABN 15 065 081 281, as trustee of BUSSQ Building Super ABN 85 571 332 201 (**Fund**).

SINCE you are a Relevant Person in relation to the Fund, for the purposes of the *Superannuation Industry (Supervision) Act 1993* (**Act**), I, Mike Cornwell under subsection 255(1) of the Act, REQUIRE you to produce to me no later than 5pm on 11 October 2021 by email at mike.cornwell@apra.gov.au, the books required in the Schedule attached to this Notice.

Dated: 07 October 2021

[redacted]

Mike Cornwell[1]

Senior Manager
Superannuation Branch 1

[1] A delegate of APRA.

Statutory definitions

Note 1 By virtue of subsection 253A of the Act, a notice under subsection 255(1) of the Act may be given to a person who has at any time been a relevant person in relation to the Fund.

Note 2 – Relevant Person has the meaning given in subsection 10(1) of the Act.

Note 3 By virtue of subsection 255(3) of the Act, APRA or an authorised person may inspect, take extracts from and make a copy of any book, or any version of any book, produced to APRA or an authorised person under section 255 of the Act.

Note 4 Under section 285 of the Act, a person who, intentionally or recklessly refuses or fails to comply with a requirement of APRA or an authorised person under section 255(1) of the Act may be liable to a penalty of 30 penalty units or, by virtue of subsection 4B(3) of the *Crimes Act 1914,* in the case of a body corporate, a penalty not exceeding 150 penalty units.

Note 5 Under section 286 of the Act, a person who, knowing that APRA is investigating, or is about to investigate, a matter, conceals, destroys, mutilates or alters a book relating to that matter or takes or sends the book out of the State or Territory it is located in or out of Australia with the intention of delaying or obstructing the investigation or proposed investigation, may be liable to imprisonment for 2 years.

Note 6 Under section 287 of the Act, it is not a reasonable excuse for you to refuse or fail to give information, sign a record or produce a book as required under Part 25 of the Act on the ground that to do so might tend to incriminate you or make you liable to a penalty. However, unless you are a body corporate, if before you make an oral statement giving information or sign a record as required under Part 25 of the Act, you claim that the making of the statement or the signing of the record might tend to incriminate you or make you liable to a penalty, and the making of the statement or the signing of the record might in fact tend to incriminate you or make you liable to a penalty, then neither the statement or the fact that you signed the record is admissible in evidence against you in a criminal proceeding or a proceeding for the imposition of a penalty. The admissibility of the making of the statement or the fact that you signed the record is not affected in proceedings in respect of the falsity of the statement or the falsity of any statement contained in the record.

Note 7 If, under this Act, a person requires a lawyer to give information or to produce a book and the book contains, or the giving of the information would involve disclosing, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer, then under section 288 of the Act, the lawyer is entitled to refuse to comply with this Notice unless the person to whom, or by or on behalf of whom, the communication was made consents to the lawyer complying with the requirement. If that person is a body corporate which is under official management or administration or is being wound up, the consent of the official manager, administrator or liquidator of the body corporate is required. If the lawyer refuses to comply with this Notice he or she must, as soon as practicable, give APRA a notice setting out:

- if known by the lawyer, the name and address of the person to whom, or by or on behalf of whom, the communication was made;
- if the lawyer is required under the Notice to give information and the communication was made in writing, sufficient particulars to identify the document containing the communication; and
- if the lawyer is required under the Notice to produce a book, sufficient particulars to identify the book containing the communication.
- A person who, intentionally or recklessly contravenes section 288 of the Act may be liable to a penalty not exceeding 30 penalty units or, by virtue of subsection 4B(3) of the *Crimes Act 1914,* in the case of a body corporate, a penalty not exceeding 150 penalty units.

Note 8 Under section 289 of the Act, if APRA is satisfied that a person has, without reasonable excuse, failed to comply with this Notice, APRA may certify the failure to the Federal Court of Australia or to a Supreme Court of a State or Territory and the Court may inquire into the matter and order the person to comply.

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SCHEDULE – REQUIRED BOOKS

This is the schedule to the Notice dated 07 October 2021 issued to Paula Masters, Chair of BUSS(Queensland) Pty Ltd ABN 15 065 081 281, as trustee of BUSSQ Building Super ABN 85 571 332 201.

You are required to produce the following Books:

1. The 'BUSSQ 2021 Board Evaluation and Capability Assessment' report issued to BUSS(Queensland) Pty Ltd by Deloitte Touche Tohmatsu on 25 August 2021.

End of schedule

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY
500 Queen Street (Level 3), Brisbane, QLD, 4000
GPO Box 9836, Queensland, QLD, 4001
T 07 3001 8500 | W www.apra.gov.au

APRA

21 October 2021

Ms Paula Masters
Chair
BUSS (Queensland) Pty Ltd
PO Box 1526
MILTON QLD 4064

Dear Ms Masters

BUSS (QUEENSLAND) PTY LTD ATF BUILDING UNIONS SUPERANNUATION SCHEME 2021 BOARD EVALUATION & CAPABILITY ASSESSMENT

I refer to correspondence from Lisa Cumberland dated 11 and 13 October 2021, providing the final report prepared by Deloitte (the Deloitte report) in relation to its 2021 Board Evaluation and Capability Assessment of BUSS (Queensland) Pty Ltd (the Trustee), in response to APRA's Notice Requiring Production of Books dated 7 October 2021.

APRA has reviewed the Deloitte report and is concerned by the apparent deficiencies in the Trustee's practices identified by Deloitte across the following dimensions:

- Board governance structure and composition;
- Board skills, knowledge and experience;
- Chair leadership;
- Board performance evaluation processes; and
- Board papers and reporting;

Prudential Concerns Requiring Immediate Action

1. **Identified Deficiencies in Board Nomination Processes**

Noting that:

- in your letter to me dated 27 September 2021, you stated that the Trustee:
    - is considering the addition of new directors; and
    - is still in the course of reviewing and processing the Deloitte report;
- section 2.3 of the Deloitte report sets out concerns in relation to the impact on the adequacy of skills and capabilities of the Board of:
    - the director nomination process, as it existed at the time of the Board Evaluation and Capability Assessment; and

- the Board's perceived lack of directiveness and challenge in terms of the skills and capabilities that it requires in potential nominees; and

- in the letter sent to APRA on behalf of the Trustee by its legal advisor dated 30 September 2021, it was stated that the recommendations set out within the Deloitte report "are non-controversial and do not prima facie raise any prudential concerns or matters than can be regarded as legislative breaches",

APRA is concerned that the Trustee has failed to grasp the seriousness of the observations raised by Deloitte and may have failed to act upon them with sufficient urgency.

As a result, APRA views that permitting the Trustee to add further directors, without first confirming that the substance of the concerns set out within section 2.3 of the Deloitte report has been addressed, risks a perpetuation of the inadequacies in Board skills and capabilities highlighted by Deloitte.

APRA has no appetite for RSE licensees failing to address identified gaps in skills and capabilities and views that effective board director nomination and appointment processes must give robust and diligent consideration to the following matters:

- Individual and collective skills, knowledge or experience gaps that require addressing via appointments; and

- The requirements of *Prudential Standard SPS 520 Fit and Proper*.

Further, upon reviewing the website of the Trustee on 20 October 2021, APRA noted that the profiles of directors Galvin and Eaves have been removed from the list of board directors.

Actions

1.1 APRA **requires** that the Trustee consult with APRA in advance of making any decisions to add, or accepting nominations that give effect to the addition of, new directors. As part of this consultation, APRA will require the Trustee to provide details of, and will evaluate, any remedial changes adopted by the Trustee in response to the observations set out in section 2.3 of Deloitte's report.

1.2 APRA **requests** confirmation in writing of the full current list of Trustee directors, as at 21 October 2021. Please provide this information by Monday, 25 October 2021.

2. Identified Deficiencies in Chair Leadership

Noting that:

- On page 38 of the Deloitte Report, it is identified that: "the Chair's competency and leadership, taken together with potential strategic and regulatory impacts for BUSSQ … needs to be addressed by the Board with urgency"; and

- On page 41, the Deloitte Report identifies three recommendations (7.1, 7.2 and 7.4) relating to the Board considering the appropriateness of the Chair continuing to hold the office of the Chair, the Board electing a Co-Chair or Deputy Chair; and the Board implementing a Chair succession plan;

- This nature of concern has persisted in the Trustee's board evaluation processes over a number of years; and

- APRA's own observations on the performance of the Chair in interactions with the Trustee largely accord with the views set out in the Deloitte report,

APRA is concerned that the Board has failed over an extended period to make necessary changes in its roles and operations to deliver the best possible outcomes to its members.

Action

2.1 APRA **requires** that the Trustee provide to APRA, by 30 November 2021, a credible and timely plan for succession of the Chair position.

Next Steps

APRA will engage further with the Trustee on the balance of the Deloitte report in due course, including forming a more detailed understanding of the actions and timeframes for formal merger considerations.

Given the serious nature of the concerns raised by the Deloitte report, APRA is reviewing its Supervisory Risk and Intensity (SRI) assessment of the Trustee. Further information on the SRI model can be found in the SRI Model Guide.

APRA requires that a copy of this letter be provided to all directors of the Trustee.

Please contact me should you wish to discuss or clarify any matters raised in this letter.

[redacted]

Mike Cornwell
Senior Manager – Superannuation Division

This letter is a protected document for the purposes of s. 56 of the *Australian Prudential Regulation Authority Act 1998* ('the APRA Act'). Under s. 56(9) of the APRA Act, I impose a condition that the following contents of this letter not be disclosed to any person other than directors, employees, overseas parents and overseas prudential regulators and external lawyers, auditors and actuaries, of your corporate group unless APRA varies this condition in writing:

- the fact that APRA has required, recommended or suggested that you take any particular action consequent to the Tier or Stage.

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1 Martin Place (Level 12), Sydney, NSW 2000
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5 November 2021

Ms Paula Masters
Chair
BUSS (Queensland) Pty Ltd
PO Box 1526
MILTON QLD 4064

Dear Ms Masters

BUSS (QUEENSLAND) PTY LTD (BUSSQ) ATF BUILDING UNIONS SUPERANNUATION SCHEME
APRA PRUDENTIAL CONCERNS AND SRI ASSESSMENT OUTCOME

I refer to APRA's letters to you dated 21 October 2021, your response dated 25 October 2021, your email message of 3 November 2021 which notified APRA of two newly appointed BUSSQ directors, Mr Michael Ravbar and Ms Madeline Dermatossian and the discussion with the Board today, 5 November 2021.

The purposes of this letter are to:

1. Express APRA's dissatisfaction and concerns in relation to the failure by the BUSSQ Board to consult with APRA in advance of the appointment of Mr Ravbar and Ms Dermatossian, as required in APRA's letter of 21 October 2021;

2. Notify the BUSSQ Board that APRA will shortly issue a Notice requiring the production of books under subsection 255(1) of the Superannuation Industry (Supervision) Act to obtain further information concerning BUSSQ's decision making process in relation to the nomination and appointment of Mr Ravbar and Ms Dermatossian and BUSSQ's merger plans;

3. Reaffirm APRA's requirement, as set out in our letter of 21 October 2021, that BUSSQ provide to APRA, by 30 November 2021, a credible and timely plan for succession of the Chair position; and

4. Notify BUSSQ of the outcome of APRA's updated Supervision Risk and Intensity (SRI) assessment.

Board Nomination and Appointment Processes

APRA notes that, in its response to our request, BUSSQ confirmed in its letter dated 25 October 2021 that the Board Directors as at 21 October 2021 were:

- Paula Masters (Chair);
- Sonya Beyers;
- Paul Bidwell; and
- Jacqui Collie

In recognition of the concerns set out in our letter of 21 October 2021, APRA required that BUSSQ consult with APRA in advance of making any decisions to add, or accepting nominations that give effect to the addition of, new directors.

By arrangement with the BUSSQ Company Secretary, a meeting was arranged between the BUSSQ Board and APRA for 5 November 2021 to discuss that matter.

On 3 November 2021, the Chair advised APRA by email of two new director appointments.

Despite APRA's concerns and consequent requirement to consult, the BUSSQ Board proceeded to make its decisions without the required consultation with APRA. This conduct is of significant concern to APRA.

As a result, APRA will shortly issue a Notice requiring production of books in relation to BUSSQ's decision making process in relation to the nomination and appointment of these directors.

APRA will assess the information produced and determine the appropriate course of action to take which may include further use of APRA's powers.

Chair succession plan

In recognition of the concerns set out in our letter of 21 October 2021, we required that the Trustee provide, by 30 November 2021, a credible and timely plan for succession of the Chair position.

Having reviewed BUSSQ's response letter of 25 October 2021, APRA notes that in its Deloitte Board Evaluation 2021 Implementation Plan, the Board did not accept Deloitte's finding 7.1 to consider the appropriateness of the Chair continuing to hold the office of the Chair. APRA reaffirms its concern that the BUSSQ Board has failed over an extended period to make necessary changes in its roles and operations to deliver the best possible outcomes to its members and cautions the BUSSQ Board to give careful consideration to its response due 30 November 2021, given the gravity of Deloitte's findings and recommendations.

Once provided, APRA will assess BUSSQ's response on this point and determine the appropriate course of action to take which may include the further use of APRA's powers.

Merger / Exit Planning

It had been APRA's intention to seek information from the BUSSQ Board on, and form an assessment of, its progress with plans to exit the industry / engage a suitable merger partner, in pursuit of the best financial interests of its members at our meeting planned for 5 November.

In view of the approach taken by BUSSQ in addressing APRA's requirements, APRA will instead require production of material in support of this assessment as part of the Notice requiring production of books referred to above.

APRA will assess the information produced and determine the appropriate course of action to take which may include the further use of APRA's powers.

Outcome of updated SRI Assessment

Given the significant prudential concerns identified by Deloitte and outlined in our recent correspondence and in view of the BUSSQ Board's established pattern of disregarding or frustrating APRA's requests, requirements and concerns, APRA has reviewed its risk assessment for BUSSQ and has revised its Stage from Stage 2 to Stage 3.

This means that APRA's supervision of BUSSQ has shifted to escalated action, which brings a significantly higher degree of scrutiny and an escalated likelihood of formal investigation and action by APRA, in order to address matters in a timely manner. Further information on the SRI model can be found in the SRI Model Guide.

APRA requires that a copy of this letter be provided to all directors of the Trustee.

Please contact me should you wish to discuss or clarify any matters raised in this letter.

Yours sincerely

[redacted]

Jane Phielix
Senior Manager – Superannuation Division

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5 November 2021

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Yours sincerely

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Jane Phielix
Senior Manager – Superannuation Division

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Notice requiring production of books

No. 63222

Superannuation Industry (Supervision) Act 1993

To: Paula Masters, a responsible officer of BUSS(Queensland) Pty Ltd ABN 15 065 081 281, as trustee of Building Unions Superannuation Scheme (Queensland) ABN 85 571 332 201 and BUSS (Queensland) Pooled Superannuation Trust ABN 39 219 239 244 (the **Funds**)

SINCE you are a Relevant Person in relation to the Funds, for the purposes of the *Superannuation Industry (Supervision) Act 1993* (**Act**), I, Jane Phielix under subsection 255(1) of the Act, REQUIRE you to produce to me no later than 5pm on 12 November 2021 in electronic format, in accordance with APRA's Document Production Protocol, the books, accounts or documents specified in the Schedule attached to this Notice.

Dated: 5 November 2021

[redacted]

Jane Phielix[1]

Senior Manager
Superannuation Branch 3

[1] A delegate of APRA.

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SCHEDULE – REQUIRED BOOKS

Definitions

Act means the *Superannuation Industry (Supervision) Act 1993* (Cth)

Books has the meaning given in subsection 10(1) of the Act

BPR means Business Performance Review, as required by Prudential Standard SPS 515 *Strategic Planning and Member Outcomes*

Business Plan means BUSSQ's current written rolling plan (of at least three years duration updated annually based on the results of the most recent BPR) for its business operations that sets out its approach for implementing its strategic objectives, as required by Prudential Standard SPS 515 *Strategic Planning and Member Outcomes.*

BUSSQ means BUSS(Queensland) Pty Ltd ABN 15 065 081 281

Deloitte Report means the report prepared by Deloitte Touche Tohmatsu entitled 'BUSSQ 2021 Board Evaluation and Capability Assessment' dated 25 August 2021

FGSC means the BUSSQ Fund Growth Steering Committee

Fit and Proper Policy means BUSSQ's documented policy relating to the fitness and propriety of its responsible persons, as required by Prudential Standard SPS 520 *Fit and Proper*

Mr Ravbar means Michael Ravbar

Ms Dermatossian means Madeline Dermatossian

Nomination and Appointment Process means the process set out in the Appointment Process Checklist detailed in item 3 of Appendix 2 to BUSSQ's letter to APRA dated 25 October 2021.

Record in accordance with the definition in section 2B of the *Acts Interpretation Act 1901* includes information stored or recorded by means of a computer.

Responsible officer has the meaning given in subsection 10(1) of the Act.

For Books produced in response to this Notice, identify the section(s) of this Notice to which the Book responds.

You are required to produce the following Books:

Strategic Plan and merger considerations

1. BUSSQ FY22-24 Strategic Plan, as referred to in the Deloitte Report.
2. A copy of BUSSQ's most recent BPR.
3. A copy of BUSSQ's Business Plan.
4. For each meeting of the BUSSQ Board, and any Board Committee, Board Sub-Committee and/or Management meeting where the most recent BPR was discussed:

    a. Agendas;
    b. Minutes; and
    c. Books presented to the meeting relevant to the most recent BPR

5. Books that relate to any update made to the Business Plan based on the results of the most recent BPR.
6. For each meeting of the FGSC since its inception in April 2021:
    a. Agendas;
    b. Minutes; and
    c. Books presented to the FGSC.

Board nomination and appointment process

7. With reference to the Nomination and Appointment Process:
    a. All policies and procedures governing the Nomination and Appointment Process including, but not limited to, BUSSQ's Fit and Proper Policy; and
    b. All checklists, document templates, process maps and other guidance material available to support the Nomination and Appointment Process.
8. For each meeting of the BUSSQ Board, Board Committees, Board Sub-Committees and/or Management meeting at which the nomination, appointment and/or decision to appoint Mr Ravbar and Ms Dermatossian as directors were considered:
    a. Agendas;
    b. Minutes; and
    c. All Books presented relevant to the nomination, appointment and/or decision to appoint Mr Ravbar and Ms Dermatossian as directors.
9. With reference to the Nomination and Appointment Process conducted in respect of both Mr Ravbar and Ms Dermatossian, and were not produced in response to item 8 of this Notice:
    a. All Books in BUSSQ's possession that relate to the Nomination and Appointment Process including, but not limited to, any relevant correspondence (including but not limited to emails, memorandums, notes, reports, advices and analysis) between:
        i. responsible officers of BUSSQ; and
        ii. a responsible officer of BUSSQ and any third party.

End of schedule