Governance News

30 July 2018

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Boards and Directors

United States | When are directors overboarded? The answer will vary according the industry and the growth rate of the company writes Equilar.

A recent Equilar blogpost discusses the question of how shareholders and boards should determine 'where to draw the line' when assessing whether a director is overcommitted. Is the presence of a director on multiple boards (and the potential advantages attaching to this) necessarily 'overshadowed' by the risk that the director in question is potentially unable to fulfil their duties due to excessive time commitments? Equilar suggests that the answer is somewhat dependent on the industry and the growth rate of the company as is evidenced in the lower rate of 'overboarded' directors in the finance sector (where board requirements and commitments are higher) as opposed to the rapidly changing media or technology sectors (where other factors eg director experience) are more valuable.

Scale of the issue: Based on Glass Lewis' guidelines (which recommend that shareholders vote against a director who serves as an executive officer of any public company while serving on more than two public company boards and any other director who serves on more than five public company boards) 44 directors in the Russell 3000 could be considered 'overboarded' which represents 0.38% of the total number of Russell 3000 directors.

Equilar attributes this to three factors: a) the 'concerted efforts' by directors to limit their board membership and maintain a 'responsible level of commitment' following the 2008 financial crisis; b) to the increasing scrutiny of board activities and director engagement that followed; and c) to 'amplified director responsibility'.

Is 'overboarding' always and necessarily a negative? According to Equilar, the highest percentage of 'overboarded directors' are in the technology (15) and media industries (11). These are both industries, in which especially earlier stage companies, face specific challenges in which experienced directors (sometimes directors who hold multiple board seats) can bring particular value eg by 'facilitating accelerated education, strategic partnerships and knowledge in an environment plagued by steep learning curves'.

Conversely, in industries such as financial services Equilar argues, the 'marginal benefit of serving on multiple boards' may be less due to the excessive time commitments present in the industry as is evidenced in the lower numbers (2) of 'overboarded' directors in this sector. Equilar adds that recent lessening of government regulatory requirements has shifted a heavier burden on board members to hold management accountable.

Is a more nuanced approach to assessing 'overboarding' warranted? The value (or not) of experienced directors in Equilar's assessment, will depend on the industry and the growth rate of the company: Equilar suggests that 'depending on the nature of the industry and current growth rate of a company, board requirements and commitments will vary. Just as the political climate has shifted financial services to require an increasing time commitment from directors, technological changes have demanded the media and technological companies seek out practiced and experienced directors'. On this basis, Equilar suggests that the answer to whether 'overboarding' is necessarily a negative (or a positive) is dependent on the particular circumstances and suggests 'shareholders must be cognizant of the strain of the industry and time commitment placed on their directors'.

[Source: Equilar blog 24/07/2018]

Board restructure announced in the wake of a failed campaign for board change at MEC Resources Ltd.

The Australian reports that following an unsuccessful campaign for board change at MEC Resources Ltd led by former CEO David Breeze and investor Peter Richards, the board of MEC Resources has resigned (with the exception of company secretary, chief financial officer and executive director Ms Deborah Ambrosini) and new directors have been installed.

In an announcement to the market MEC said:

- Chair Goh Hock has resigned from the board and as Chair but will continue his involvement with MEC as a consultant and will provide regulator 'strategic advice to the board'. The AFR comments that Mr Goh's involvement in MEC has been questioned given he is also a director of Santos and Harbour Energy.

- Mr K O Yap and Mr Heng Yu have resigned from their roles as directors.
- Mr Michael Sandy has joined the board replacing Mr Goh Hock as Chair.
- Mr Matthew Battrick and Mr Andrew Bald have been appointed non-executive directors.
- Ms Deborah Ambrosini will continue in her role as executive director, company secretary and chief financial officer.

According to The Australian, MEC market capitalisation has fallen by about $1 million from $5.3m in the past fortnight.

[Sources: [registration required] The Australian 25/07/2018; ASX Announcement MEC Resources Ltd: New Director Appointments 24/07/2018; Results of General Meeting 10/07/2018]

Diversity

United States | Replacing women with women? Heidrick & Struggles' latest annual report on Fortune 500 board appointments has found that though the number of female board appointees is at record levels, overall improvement in the composition of boards has been minimal.

Heidrick & Struggles has released its annual study of trends in non-executive director appointments in Fortune 500 companies: *Heidrick & Struggles 2018 Board Monitor.*

Among the key findings were the following.

- **Women accounted for 38% of incoming board directors on Fortune 500 companies** in 2017 (up from 27.8% in 2016). According to the report, this is the largest percentage of women among new director appointees since the data was first tracked in 2009.
- **Overall improvement in gender parity minimal: Women replacing women?** Despite an increase in the number of women appointees, there has been only slight improvement (1.2% on the previous year) in gender composition on boards overall, with the overall percentage of women on Fortune 500 boards having risen only to 22.2% in 2017. The report attributes this to the fact that most new female director appointees were replacing other women who had left their board roles.
- **Fewer former CEOs appointed than previously:** The report also found that there is evidence that boards are beginning to look beyond their traditional first choice of CEOs to fill vacant seats with fewer current and former CEOs appointed in 2017 than previously: current and former CEOs accounted for 47% of director appointments in 2017, down 50% in 2016, 54.4% in 2015, and nearly 55% in 2013. Nearly 36% of new board appointees in 2017 had no previous board experience. This is up sharply from 25% in 2016, the researchers comment which is partly attributable they suggest to pressure in recent years to bring new perspective to boards.
- **2% increase in the number of African American appointees:** The share of new board appointments that went to African-Americans rose from 9% to 11%, which the report notes is the highest proportion ever. The report suggests the increase may be due to increased overall awareness of the value and need for diversity on boards.
- **Gender parity by 2025?** Extrapolating data for 2017 using a three-year trailing average method, Heidrick & Struggles predicts gender parity in new appointments will be achieved by 2025.

Heidrick & Struggles vice chairman and co-managing partner of the CEO & Board Practice Jeff Sanders commented: 'The Board Monitor findings align with the many conversations we're having with our clients, who are increasingly looking for diverse talent to bring fresh perspectives into their boardrooms…We are encouraged that this latest data shows an acceleration toward greater representation of women on boards. As companies look beyond the "usual places" to fill open seats, they are refreshing their boardrooms to be more reflective of today's workforce and marketplace'.

[Sources: PR Newswire 19/07/2018; Heidrick & Struggles media release 19/07/2018; Heidrick & Struggles' 2018 Board Monitor]

In Brief | Flexible work practices both good for employees and for businesses? New research commissioned by the Victorian government has found that flexible work delivers significant savings for businesses as well as benefits for employees. The WGEA comments that 'Normalising flexible working arrangements for women and men is one of the key actions to closing the gender pay gap and increasing the representation of women in leadership positions'.

[Sources: WGEA media release 25/07/2018; Victorian Minister for Women Natalie Hutchins media release 14/07/2018; Promoting gender equality and empowering women and girls]

In Brief | 'Diversity is far more than merely a box-ticking exercise': Women are under-represented in the finance profession especially at senior levels, both in Australia and globally according to a new report by Frontier Advisers. The report argues that there are persuasive social, legal and financial reasons for business to act to redress the balance.

[Sources: The Frontier: Thought leadership and insights from Frontier Advisors Issue 138 July 2018; [registration required] The Australian 23/07/2018]

Remuneration

In Brief | A question of ethics? A strong ethical foundation is the key to ensuring aggressive performance targets don't lead to poor behaviour writes RMIT Senior Lecturer Tim O'Shannassy.

[Source: The Conversation 23/07/2018]

In Brief | The workforce participation rate for women is growing at nine times the rate participation rate for men and is on track for parity in a decade, but many of these jobs are low-paying leading the researcher to query whether the value assigned to jobs in the 'caring' occupations are given the appropriate value.

[Source: The Conversation 25/07/2018]

Institutional Shareholders and Stewardship

ACSI has announced that VicSuper has signed on to the Australian Asset Owner Stewardship Code.

The Australian Council of Superannuation Investors (ACSI) has announced that VicSuper had become the latest signatory to the ACSI Australian Asset Owner Stewardship Code (see: Governance News 18/05/2018) joining Australian Super, Hostplus and Hesta who are already signatories.

ACSI chief executive Louise Davidson commented: 'By becoming a signatory to the Stewardship Code, VicSuper is taking a leading role in setting best practices standards for the disclosure and management of stewardship activities'.

[Source: ACSI media release 23/07/2018]

In Brief | The Korea Corporate Governance Service (KCGS) has reportedly issued a statement, announcing that Glass Lewis, has become the first foreign proxy advisor to adopt South Korea's stewardship code.

[Source: Pulse 22/07/2018]

Other Shareholder News

Have activists highjacked corporate governance? Commentator Janet Albrechtsen has questioned whether the focus on 'social issues' in proposed changes to the *ASX Corporate Governance Principles and Recommendations* has come at the expense of focus on improving governance practices.

Writing in The Australian, Janet Albrechtsen has questioned whether the focus on 'social issues' (eg diversity; social responsibility; a social licence to operate) in the proposed changes to the *ASX Corporate Governance Principles and Recommendations* is conducive to improved governance standards.

[Note: Consultation on proposed amendments to the *ASX Corporate Governance Principles and Recommendations* recently concluded (27 July). For an overview of the proposed amendments see: Governance News 04/05/2018.]

In her view, there is significant risk (if the proposed amendments are adopted in the final version) that by 'Inserting deliberately ambiguous words about diversity, social responsibility, a social licence to operate and so on into ASX corporate governance principles…activists [would be provided] with new and potent weapons to blackmail corporate Australia into following favoured social agendas'.

Ms Albrechtson also argues that the increased focus in each edition of the Principles (ie since the introduction of the *ASX Corporate Governance Principles and Recommendations* in 2013) on 'social issues' has ultimately led to poorer governance outcomes citing examples of recent corporate misconduct in support of her view.

Ms Albrechtson expresses support for the views put by new AMP Chair David Murray that the present ASX principles have been ineffective and 'the revised principles will go further in limiting the development of knowledge and value in governance models for individual institutions' on the basis that they have become overly prescriptive.

Ms Albrechtson concludes that 'Nothing will change unless others challenge the noisy but small number of activists who have been allowed to hijack corporate governance in this country. The corporate dissidents could start by pointing out that there is nothing socially responsible about the dire results of their corporate governance experiment.'

[Source: [registration required] The Australian 25/07/2018]

United States | Encouraging IPOs to 'restore US competiveness': *S. 488 JOBS Investor Confidence Act 2018* (JOBS Act 3.0) has passed the House and will now be considered by the Senate.

On July 17, 2018, the US House of Representatives passed *S. 488 JOBS and Investor Confidence Act* (JOBS Act 3.0), a package of reforms consisting of 32 pieces of legislation which leader of The House Financial Services Committee Jeb Hensarling writes is primarily aimed at 'spur[ring] entrepreneurship by reinvigorating business startups and initial public offerings' to 'restore US competitiveness'. According to Mr Hensarling, the number of IPOs currently stands at 50% of what it was 20 years ago.

The legislation proposes to do this by streamlining the IPO process, extending certain disclosure exemptions for emerging growth companies and expanding the definition of accredited investors among other measures.

Mr Hensarling comments when 'President Obama signed the first JOBS Act in 2012, he called it "one useful and important step" on the journey "to remove a number of barriers that were preventing aspiring entrepreneurs from getting funding." For the sake of America's long-term growth and competitiveness, let's hope support for the Job Act 3.0 will be similarly bipartisan'.

The legislation will now be considered by the Senate.

Impacts for existing listed companies and investors? Commenting on the legislation, Glass Lewis writes that the Bill could also have significant consequences for already listed companies and their investors eg the Bill proposes to roll back some *Dodd Frank Wall Street Reform and Consumer Protection Act 2010* reforms (eg removing the stress test requirements for non-bank institutions). In addition, Glass Lewis comments that the Bill is not entirely aimed at rolling back/streamlining existing requirements but in fact includes some additional and/or revised disclosure requirements eg companies with multi-class voting structures would be required, were the Bill enacted, to disclose the number of shares of all classes of voting securities beneficially owned as a percentage of total outstanding securities and the total combined voting power that those securities represent.

[Sources: [registration required] The WSJ 15/07/2018; Whitehouse media release: Statement from the Press Secretary on S. 488, the JOBS and Investor Confidence Act of 2018 17/07/2018; Glass Lewis Blog 18/07/2018; S. 488 JOBS Investor Confidence Act 2018; Glass Lewis 18/07/2018]

In Brief | Sir Win Bischoff has written open letters to company chairs, investors and proxy advisors to remind them of their responsibilities in making the newly revised 2018 UK Corporate Governance Code a success, delivering better business performance and public trust.

[Sources: FRC media release 20/07/2018; Open letter from Sir Win to company chairs; Open letter from Sir Win to investors; Open letter from Sir Win to proxy advisors]

In Brief | The Nigerian Financial Reporting Council has released a draft Corporate Governance Code for consultation. Consultation closes 31 July 2018.

[Source: Financial Reporting Council of Nigeria media release 24/07/2018]

Regulators

In Brief | The Administrative Appeals Tribunal has reduced ASIC's permanent banning order against a financial adviser that ASIC alleged was not of 'good fame or character' on the basis that there was no 'longer reason to believe' the applicant was 'not of good character'. In making his decision, Deputy President McCabe said: 'I stress that in doing so I am not disagreeing with the decision ASIC made at the time…the evidence of the dishonesty were more than enough to justify the decision. But the case has evolved as the applicant's insight into his own behaviour has changed'.

[Sources: 18-213MR AAT varies banning period of former Hobart financial planner; Williams and Australian Securities and Investments Commission (Taxation) [2018] AATA 2312 (13 July 2018)]

In Brief | UK Financial Conduct Authority (FCA) enforcement actions have dropped significantly according to the latest FCA enforcement report: According to the report, the value of financial penalties imposed by the FCA in 2017/18 dropped 61% to £69.9m compared with the value of financial penalties imposed in 2016/17 (£181 million). The financial penalties imposed during 2017/18 were split across 16 enforcement actions, six of which were taken against firms (£69 million) and the remainder against individuals (£0.9 million). Separately, the FCA has also released its annual report for the year ended 31 March 2018 in which it described the enforcement action taken as 'appropriate'.

[Sources: Financial Conduct Authority annual report for the year ended 31/03/2018; Financial Conduct Authority Enforcement annual performance report 2017/2018]

In Brief | ASIC's criminal conviction rate is less than a third of its success rate 20 years ago, though it's budget has trebled? Based on a review of ASIC's annual reports The Australian has questioned the regulator's performance.

[Source: [registration required] The Australian 27/07/2018]

Corporate Social Responsibility and Sustainability

Responsible Investment Association Australasia (RIAA) benchmark report has found impact products' value has quadrupled over 2.5 years.

The Responsible Investment Association Australasia (RIAA) in partnership with Swinburne University's Centre for Social Impact have released a report: *Benchmarking Impact 2018* into impact investing activity and the performance of Australian impact investment products over the period 1 July 2015 to 31 December 2017. The report found that Australian investment products that deliver social and environmental impacts quadrupled in dollar value over the reporting period from $1.2bn at December 2015 to $5.8bn at December

2017 delivering positive financial returns for investors, benefiting he environment and impacting the lives of tens of thousands of people.

Increased investment activity (green bonds are the primary driver of growth)

- The data set of investable impact investment product has grown from $1.2 billion since the last report as at 30 June 2015 to $5.8 billion at 31 December 2017.
- Green bonds were the primary driver of growth accounting for $4.9 billion of the 2018 data set. However, the other types of impact investment products represented by the remaining data set have also grown rapidly from nearly $300 million in total, to nearly $1 billion in total over the same period.
- Excluding green bonds, the highest concentration of investments by dollar weighting is in real assets, including property and infrastructure
- Environmental investments (96%) far outweigh social investments (4%) on a dollar-weighted basis.

Investment performance – financial and impact

- **Financial performance:** According to the report, financial returns for assets in the data set broadly reflect the returns in the 2016 data set (used in the initial 'pilot report' released in 2016) and were found to be tracking in line with investor expectations. Private debt investments in aggregate are reportedly achieving a gross 8.0% p.a. since-inception return relative to global investor expectations of between 2.7%–7.0% for this asset class.
- **Impact performance:**
  - Examples of the social and environmental impacts that Australian impact investments are having include: 700 vulnerable families assisted, 369 employment pathways or jobs created; 22,688 students supported; 1069 clients receiving health and well-being services, 2,110,000 tons of CO_2 emissions avoided and 950 mega litres of water delivered to wetlands, creeks and ecosystems.
  - According to the report, there is an increase in the cumulative impact relative to 2016 levels eg the data set reported 3.9 tonnes of carbon dioxide equivalent emissions avoided where as in 2018, this has increased to over 2,110,000 tonnes of CO_2 emissions avoided or abated. The researchers attribute this to the growth in environmental assets in the data set, as well as more time for the assets in the 2016 data set to accumulate benefits which can now be reported.
- **The United Nations Sustainable Development Goals (SDGs) are gaining significant traction**. The SDGs is the most reported impact framework to be adopted by respondents, with *Goal 11: Sustainable Cities and Communities* receiving the greatest amount of investment dollars above the other 16 SDGs.

RIAA CEO Simon O'Connor commented:

- **Demand for impact investments is strong**: 'Australians are fundamentally attracted to the idea that their investments can shape a better world, with our own research showing that 9 in 10 Australians expect their super and other investments to be invested responsibly and ethically. Impact investment provides the vehicle to deliver on these expectations and help people do good and do well at the same time. RIAA is working to bring impact to scale: to move from the edges of the investment market into the centre. This means increasing the capital flowing into impact investments, as well as taking the important lessons provided by this field to the broader investment community, so that impact is considered equally alongside risk and return' Mr O'Connor said. He added that this strong demand is evidenced by the increased activity (and impact) highlighted in the report.

[Note: The research Mr O'Connor is referring to appears to the following RIAA report: *From Values to Riches: Charting consumer attitudes and demand for responsible investing in Australia*. For an overview of the key findings see: Governance News 17/11/2017]

- **Lessons in reporting?** Mr O'Connor suggested that the 'emerging industry' has lessons for finance more generally 'highlighting that all of our investments have an impact, whether positive, negative or neutral, whether intentional or not – and that the trillions of dollars flowing around capital markets today are shaping the Australia of tomorrow. Impact investment, and in particular the rigour behind the measurement of social and environmental outcomes, is teaching the finance community at large to think about and measure the impact that it is having, beyond solely the generation of financial returns'. He added that investors are increasingly reporting on how their investments are contributing to delivering on the UN Sustainable Development Goals, an area 'that we are seeing again influence the portfolios of investors well beyond the impact investment market.'

[Sources: RIAA media release; Benchmarking impact 2018: Market Activity and Performance Report 2018; Investment Magazine 23/07/2018]

Climate Disclosure | IAG has released a three year climate action plan to reduce carbon emissions, assess exposure of its portfolio to changing climatic conditions, invest more into green bonds and extend its fund manager screening for environmental, social and governance criteria.

IAG has released its first three year climate action plan. The plan is intended both to ensure the business is managed sustainably for the long term and to ensure offerings remain affordable and accessible for consumers. Among the six areas of focus in the plan are the following: reducing carbon emissions, assessing exposure of its portfolio to changing climatic conditions, investing more into green bonds and extending its fund manager screening for environmental, social and governance criteria.

The AFR reports that senior executives at IAG will be expected to integrate climate change risk mitigation initiatives into their respective divisions, but that performance on these factors in not linked to remuneration or specific timelines, though this may be considered by the company in future.

Climate activist Market Forces is critical of this plan (and similar plans)? Activist Market Forces which (among other things) has called on Australia's largest insurers (QBE, Suncorp and IAG) to 'educate customers about the effects of climate change on premiums and participate in risk mitigation measures' and which has previously supported (an unsuccessful resolution) at QBE calling for greater climate disclosure, is reportedly critical of the lack of deadlines or 'solid commitments' in the IAG plan. Executive director Julien Vincent said: 'Other insurers have done a lot of this work, even though they won't disclose it, which they should be doing…If I'm to give them any credit, it would be in acknowledging the danger of our current trajectory of global warming, and stating their intention more outspokenly as an advocate for climate change action'. The AFR comments that IAG has been carbon neutral since 2012, and hit its 2020 target to reduce emissions by 10% ahead of time.

The AFR comments that Suncorp released its own climate change action plan in April. Reportedly, Market Forces said while there were 'milestones that the company's leadership can be held accountable for there was no end date to the work'.

The AFR adds that QBE is now 'an outlier and as yet has not made commitments [to managing climate risk]'.

[Sources: IAG media release 19/07/2018; IAG-Climate-Action-Plan-2018; [registration required] The AFR 23/07/2018]

United States | A new report from Deloitte argues that the board's oversight role with respect to strategy and risk should include oversight of the company's social purpose strategy.

Deloitte has released a report highlighting emerging trends for 'boards to watch' as companies determine 'how to activate a social purpose strategy'.

Trends

Trends highlighted in the report include the following.

- **Companies are shifting from a siloed CSR view to a broader corporate social purpose strategy which has implications for implementing and reporting on strategy.** The report observes that companies are increasingly integrating pro-social priorities into their core business strategy and reporting and more effectively communicating the social and financial impacts of social purpose activities by including social purpose information in corporate financial reporting.
- **Diversity in approach to implementation:** The report also observes that there is no 'one size fits all' approach but that the area(s) in which one company demonstrates its commitment to social

responsibility are likely to differ from those of other companies according to a wide range of factors eg brand identity, industry, size, location(s), resources, and history, including any history of noncompliance or other negative items that the company may want or need to overcome.

- **Social responsibility activities may 'necessitate changes' to 'core and other business practices'.** For example, responsible sourcing of materials can trigger significant changes in purchasing and procurement processes.
- **The US tax changes enacted in 2017 have freed up funds that some companies are directing towards social-purpose initiatives.** The report observes that several large companies have announced significant increases in corporate giving commitments directly tied to tax reform.
- **Companies are more frequently using their platforms to speak out on social issues,** particularly those affecting their employees and their ability to do business, even at the risk of alienating certain constituents and government officials. For example, in recent months issues surrounding refugees and immigration, race and diversity, and gun violence have been prominent, with CEOs, companies, and coalitions of companies increasingly taking public stands.

Role of the board? Steps the board may wish to consider implementing.

- Given the increased focus on corporate citizenship and social licence to operate, and the potential benefits and/or risks associated, the report argues that the board's oversight role with respect to strategy and risk should include overseeing the company's social purpose strategy, 'including encouraging management to address social purpose as part of its corporate strategy if it is not already doing so'.
- As companies 'refresh their social purpose strategies and increase their commitments accordingly', boards may need to focus, the report suggests, on overseeing both the nature of the commitment and the actions taken to implement it, as well as any risks that could arise from pro-social activities.
- The report suggests that boards may consider:
  - **Board review of social purpose strategy and execution:** Asking management whether and to what extent the company has developed a social purpose strategy and the extent of related activities, 'challenge or question both, and review how they are being executed'. The report also suggests that it the company does not have a stated social purpose strategy that the board may 'want to understand management's reasoning, challenging it as appropriate'.
  - **Creation of a board level committee:** Depending upon the nature and extent of the company's social purpose, the board may wish to consider forming a separate, board-level committee to oversee those activities. A committee of this kind may generate both reputational benefits by demonstrating the company's pro-social commitment at the highest levels, and also provide some comfort to investors on board oversight of social purpose strategy, activities and related benefits and risks for the company.
  - **Disclosure of social purpose strategies/risks:** Whether or not companies form separate board-level committees, they should also consider disclosing the role of the board in overseeing social purpose strategies and risks.
  - **Board involvement in determining where advocacy and support should be targeted:** Whether within a sub-committee or under the purview of the entire board of directors, the board can also help management determine which issues and organisations should receive advocacy and support from the company. 'Just as the board oversees capital allocation, the board can oversee the allocation of the company's limited pro-social resources to help maximize shareholder value'.

[Sources: Deloitte: The board's role in Corporate Social Purpose July 2018; Harvard Law School Forum on Corporate Governance and Financial Regulation 20/07/2018]

In Brief | ACCR have announced plans to lodge a resolution at the upcoming Origin Energy AGM calling for the company to improve its measurement and reporting of GHG emissions, and for disclosure of details of the process it followed for obtaining consent from the traditional owners for

the development of new gas fields in the Beetaloo Basin (on Indigenous land). ACCR has called on shareholders to support each resolution.

[Source: ACCR media release 26/07/2018]

In Brief | The AFR reports that investors are increasingly focused on the long-term 'social licence' that comes from being a good corporate citizen: Morgan Stanley's examination of ASX 200 companies and their ability to harness inclusive growth identified diagnostics group Sonic Healthcare, hearing implant business Cochlear Group and property and infrastructure company Lendlease Group as the three standouts for being able to maximise the benefits as the world looks to 'inclusive growth'. Ramsay Health Care and Primary Health Care were also reportedly highly ranked.

[Sources: [registration required] The AFR 25/07/2018]

Financial Services

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission)

Top Story | Treasury has submitted to the Financial Services Royal Commission that the separation of vertically integrated financial firms is not warranted, though 'more work' is needed to determine the 'nature and extent of conflicted advice' in the superannuation sector.

Treasury's submission to the Financial Services Royal Commission in Background Paper 24 outlines (among other things) Treasury's views on whether the Royal Commission should recommend structural separation to prevent the inherent conflicts of interest in vertically integrated business models where financial advisers essentially work for the financial product manufacturers.

Treasury is of the view that structural reform is unwarranted at this time: 'Our judgment — subject to evidence in future hearings — is that recent structural changes in the industry, recently introduced or soon to be introduced reforms, other potential reforms the Commission could recommend, and heightened attention by firms and ASIC, should be sufficient to mitigate the systemic risks involved — subject to further ongoing scrutiny by regulators'.

Treasury adds that 'Structural separation would also be complex and disruptive, and could have unintended consequences'.

The paper goes on to explain that though there are potential advantages in structural separation there are also 'significant drawbacks' including the loss of economies of scale, convenience for consumers and better access to redress with vertically integrated firms as well as the risk of unintended consequences from individuals switching to rely on general advice or other (lower quality) advisers.

Superannuation sector? Treasury writes that if structural separation were to be considered in the superannuation sector, **'**More work would be needed to determine the nature and extent of conflicted advice provided by the superannuation sector and whether it exists in intra-fund advice'. Treasury goes on to say that the 'Royal Commission hearings on superannuation may shed some light on this' and adds that the Australian Securities and Investments Commission (ASIC) 'will shortly undertake an examination of financial advice in the superannuation industry'.

[Source: Treasury: Background Paper 24: Submission on key policy issues 26/07/2018]

Round 5 Superannuation hearings will commence on 17 August. The timeframe and topics of the remaining hearings have also been confirmed.

The focus of the fifth round of public hearings will be on superannuation. The hearings will run from 6 August to 17 August.

Round 5: Schedule of topics and case studies

Topic	Case studies
Duties of RSE Licensees (including structural and governance arrangements, the relationship between trustees and financial advisers and selling practices)	AMP Super and NM Super (AMP); Australian Super; Catholic Super (CSF); Colonial First State (CBA); Electricity Supply Industry Superannuation (Qld); Host-Plus; IOOF; Mercer; NULIS (MLC/NAB); Onepath and Oasis (ANZ); Suncorp; Sunsuper; United Super (CBUS)
Superannuation funds and Aboriginal and Torres Strait Islander members	QSuper
Effectiveness of superannuation regulators	ASIC APRA

Remaining public hearings and delivery of interim report

The Commission has also confirmed the timelines and topics for the remaining hearings and delivery of the interim report.

- Round 6 public hearings will run between 10 and 21 September. The focus will be on insurance.
- Written submissions will be invited at the conclusion of Rounds 5 and 6, and following the tabling of the interim report (on 30 September).
- Round 7 public hearings will run between 19 November and 30 November. The hearings will focus on policy questions arising from the first six rounds of public hearings.

Background papers on superannuation ahead of its 5th round of public hearings:

- *Background Paper 22 - Consumer interactions with the superannuation industry.* This paper provides a broad outline of how consumers (or members) enter the superannuation market, interact with superannuation fund trustees and access their superannuation at retirement.
- *Background Paper 23 - Overview of key regulatory reforms in superannuation.* In this paper, Treasury has outlined the various super reforms since the introduction of the compulsory superannuation guarantee regime in 1992 and the Wallis Inquiry (1997). Treasury has also highlighted the Government's latest reform proposals, including the *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill* 2018; *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill* 2017; Retirement Income Framework measures and the Productivity Commission draft report on the competitiveness and efficiency of the superannuation system.
- *Background Paper 24: Submission on key policy issues*. Treasury's submission to the Financial Services Royal Commission in Background Paper 24 outlines (among other things) Treasury's views on whether the Royal Commission should recommend structural separation to prevent conflicts of interest inherent in vertically integrated business models where financial advisers essentially work for the financial product manufacturers. This paper is discussed in a separate post below.
- *Background Paper 25: Legal framework governing aspects of the Australian Superannuation System*. In this paper, Professor Pamela Hanrahan explains aspects of the legal framework for the Australian superannuation system, focusing on the rules that govern the use of members' funds by trustees and other professional financial services providers in the superannuation system. It also deals briefly with advice in superannuation, and member dispute resolution.

[Sources: Royal Commission into Misconduct in the Banking Superannuation and Financial Services Industry: Public Hearings; Publications]

Superannuation

Top Story | ASIC Chair James Shipton has outlined a new supervisory approach to supervision of the superannuation sector.

In a speech to the Financial Services Council Summit: *The trust deficit and superannuation*, Australian Securities and Investments Commission (ASIC) Chair James Shipton has called on the superannuation sector to address the 'trust deficit' stating that 'To be blunt, there has been too much focus in many parts of the superannuation sector on exploiting opportunities to make money from Australians instead of focussing on the responsibilities that come from being the custodians of other people's money'.

Key Points

1. **Three 'suggestions' for the financial sector to consider implementing:** Mr Shipton called for the financial sector generally to: a) conduct 'wholesale review of conflicts of interests'; b) for greater management oversight of and investment in, systems and processes to identify, manage and remediate issues (eg breach reporting); and c) for firms to create/refresh strategies to deal with regulators.
2. **Enhanced supervisory approach to superannuation:** Mr Shipton said that ASIC is 'currently looking to deliver an enhanced supervisory approach for superannuation and have already strengthened our team focused on this area'. He then outlined some of the actions included in the new approach including more frequent on-site visits and more engagement (among others).
3. **Forthcoming reports/investigations:** Mr Shipton flagged a number of forthcoming ASIC reports/investigations: a) Breach Reporting: ASIC's review into breach reporting practices in 12 banking groups will be released next month; b) Insurance in Super Report (and 'further work' on *Employers and Super* and in relation to *Total and Permanent Disablement Insurance*); c) ASIC is 'planning a project looking at personal advice provided by superannuation funds'; d) review of internal IDR processes.

Context: The Royal Commission: Mr Shipton prefaced his comments by stating that 'The Royal Commission has highlighted, for the community, the costs and consequences of financial services misconduct' much of which, is the same misconduct that ASIC has been investigating and acting on for many years and is 'reflective of a trust deficit facing the financial services sector in Australia'. He reiterated that it is up to the financial services industry to address the issues being highlighted, many of which have been apparent for some time.

Restoring the trust deficit in the financial sector generally: Three 'suggestions' for industry.

Mr Shipton said that 'There has been a great deal of talk, indeed rhetoric, around the trust deficit and the cultural reforms needed in finance. Now is the time to move from rhetoric to reality'. Mr Shipton outlined three 'suggestions' to industry.

1. **Address conflicts of interest**: 'there needs to be wholesale review of conflicts of interests in firms, sectors and markets to identify, manage and, if appropriate, remove every single conflict of interest' Mr Shipton said. He added noted that conflicts of interest had been highlighted during the Financial Services Royal Commission hearings as a 'root cause' of much of the identified misconduct and that the historical 'reluctance' and/or 'resistance to addressing the issue, even when pointed out by ASIC, 'must change'. 'This must change because conflicts of interest that are imbedded in remuneration become imbedded in corporate culture. With the result being that the culture is not one that will have the best interests of its customer in mind. Moreover, as we all know, shifting these cultural norms is firstly a question of leadership. Accordingly, addressing conflicts of interests requires attention from the most senior leaders in finance' he said.
2. **Greater management oversight and investment in systems and processes:** Mr Shipton said that there is a need for both greater senior management attention to conduct issues and a need for more investment in management systems and processes to 'capture, diagnose and remediate conduct issues earlier, quicker and more efficiently' including the adoption of 'emerging regtech solutions'. Mr Shipton added, that in his view, there has not been sufficient investment in these

systems and processes to date, with the result that it takes 'far too long for management to meaningfully address' conduct problems.

- **Need for improvement in Breach Reporting practices:** Mr Shipton used the example of breach reporting as to illustrate the need for improvement. He said that one of the key findings of the review into breach reporting practices in 12 banking groups to be released next month by ASIC is that it takes an institution over four years to identify an issue for investigation internally. Accordingly Mr Shipton said 'there is an urgent need for investment in systems, procedures and policies that better and more quickly identify emerging conduct and systemic issues so that they can not only be reported to us more quickly, but so that can be resolved more quickly'.
- **30% increase in breach reports in the 2017-2018 financial year** is an indication that there is 'enhanced attention to these issues right now' but there needs to be supporting 'industrialisation and institutionalisation of these processes to ensure management and thus the institution itself, doesn't fall back into bad habits'.

3. **Strategy for dealing with regulators.** Based on discussions with financial services leaders and their advisers Mr Shipton said that he had observed there is often no coherent and consistent strategy for dealing with regulators, 'In fact, there does not appear to be a single example of a strategic plan that articulates the principles of engagement with regulatory agencies'. This means that issues are often dealt with in an ad-hoc and/or inconsistent way, particularly in larger and more diverse organisations. Mr Shipton added: 'as the Royal Commission hearings have highlighted, some of these dealings with regulators are totally unacceptable and arguably illegal. So, I want to encourage industry leaders to ask themselves if they have a clear strategy for engaging with ASIC and other regulators? And importantly – are your actions consistent with your strategy? And is there appropriate accountability to ensure this happens? I am not calling for another policy document with motherhood statements. Instead, there needs to be genuine change and genuine vision on how to be a responsible corporate citizen vis-à-vis regulatory agencies specifically, and the community more generally'.

Issues in superannuation

Mr Shipton outlined a number of examples of the types of conduct that he identified as 'contributing to the trust deficit in superannuation'. These included:

- 'the exploitation of consumer disengagement and consumers' knowledge and decision biases' (eg processes by funds that make it unreasonably difficult for consumers to opt out of insurance);
- 'failures to promote informed decision making' (eg misleading promotions that prioritise marketing over accurate disclosure of key terms);
- 'poor financial advice about superannuation issues and options' (eg in relation to setting up a SMSF or switching superannuation products);
- 'poor treatment of consumers in their interactions with the super system' (eg delays and difficult processes in insurance claims handling and general complaints handling);
- 'practices that make it difficult for vulnerable consumers to access their super' (eg indigenous Australians in remote areas whom are eligible to access superannuation benefits, but are unable, or whom have significant difficulty, in doing so); and
- 'defensiveness when it comes to transparency about fund operations' (eg a resistance to disclosing investment holdings which he said is 'indefensible when…it is other people's money'.

ASIC's planned response: Enhanced supervisory approach

Mr Shipton said that the regulator is 'currently looking to deliver an enhanced supervisory approach for superannuation and have already strengthened our team focused on this area'. He said that the new approach would 'heighten the intensity of our regulatory scrutiny in superannuation' and would involve the following.

- Use a range of supervisory techniques, including more frequent on-site visits.
- Move towards a more intensive engagement model, where superannuation stakeholders will deal with specific ASIC staff on a more consistent and regular basis.
- Build 'significant public actions in the superannuation sector', including more enforcement outcomes.
- Better leveraging the data currently available to ASIC, and APRA: 'We will also make use of new data sources, including internal dispute resolution data that must be reported to ASIC, as well as data on life insurance claims coming from joint ASIC and APRA work'.
- Increased focus on the consumer perspective through the incorporation of more consumer testing and shadow shopping.
- Mr Shipton noted ASIC 'are not the only ones regulating the superannuation sector' and that industry can 'expect our approach to continue to build on and enhance our close working relationship with these agencies'.

Forthcoming reports/investigations

Mr Shipton also flagged a number of forthcoming reports/investigations. There included the following.

- **Breach Reporting**: ASIC's review into breach reporting practices in 12 banking groups will be released next month.
- **Insurance in Super Report** (and 'further work' on *Employers and Super* and in relation to *Total and Permanent Disablement Insurance*)
- **Personal advice by superannuation funds:** ASIC is 'planning a project looking at personal advice provided by superannuation funds'.
- **Internal Dispute Resolution — time to review complaints handling practices:** In addition, Mr Shipton said that ASIC will also focus on the implementation of dispute resolution reform, which he commented is 'an area where there is significant scope to improve outcomes in superannuation'. He said that ASIC will consult with stakeholders about internal dispute resolution policy settings contained in regulatory guide RG165, after the commencement of the Australian Financial Complaints Authority – AFCA on 1 November 2018. He added that a 'key focus of this consultation will be the maximum internal dispute resolution timeframes, and how and when the current 90 day resolution deadline should be reduced'. Mr Shipton commented that 'now is a good opportunity to get ahead of the changes that will come in relation to internal dispute resolution reform - by reviewing your complaints handling practices to ensure they are providing timely resolutions for consumers'.

[Sources: A speech by James Shipton, Chair, Australian Securities and Investments Commission at the Financial Services Council Summit 2018 (Melbourne, Australia), The trust deficit and superannuation 26/07/2018; [registration required] The AFR 26/07/2018; [registration required] The Australian 27/07/2018]

The Governance Institute has expressed support of the draft PC proposal to increase the number of independent directors on superannuation boards, though it is against legislating proposed governance changes.

The Governance Institute of Australia (GIA) has released its submission to the Productivity Commission Draft Recommendations – Superannuation: Assessing efficiency and competitiveness (Report).

[Note: The PC draft recommendations were released on 29 May and consultation closed on 13 July. For an overview of the draft findings and recommendations see: Governance News 04/06/2018.]

Key Points

The Governance Institute submission is 'confined to issues relating to governance and is premised on the following.

- **A principles-based approach is preferable to legislating the proposed changes**: The GIA states that a superannuation industry led body should be established to develop guidance on governance matters (rather than legislating the proposed changes). This guidance, the GIA writes, would be similar to that applying to listed companies under the *ASX Corporate Governance Council's Principles and Recommendations*. Any legislative requirement should be for superannuation funds to make disclosures in relation to this guidance. In support of its position, the Governance Institute states that the 'the requirement to publicly disclose against the Principles and Recommendations, backed by the Listing Rules…has been fundamental to the improved standard of corporate governance disclosure in Australia since they were introduced in 2003'.

- **A principles based approach provides the necessary flexibility:** 'Governance Institute also believes that there is no 'one size fits all approach' to governance…Importantly, under the 'if not, why not' approach taken by the Principles and Recommendations, if an entity considers a Recommendation is inappropriate to its particular circumstances, it has the flexibility not to adopt it —- a flexibility tempered by the requirement to explain why to its shareholders'.

Further detail

- The GIA states that submission is supportive of draft findings 9.1-9.3 in relation to the use of a skills matrix, board composition and the importance of a robust board evaluation process.
- **Board performance assessments, board skills matrix, external third party evaluations:** The GIA recommends against legislating these requirements stating that the preferable approach would be to establish a superannuation industry led body to collectively develop appropriate guidance and legislated disclosure against this guidance. Commenting on board skills matrices, GIA writes that 'Any approach to disclosure of skills matrices for superannuation boards should require disclosure of skills across the board as a whole and not of individual directors'.
- **Independent directors:** GIA writes that it is 'on the public record as stating that our preference is for the boards of superannuation funds to have a majority of independent directors (with appropriate election and accountability requirements)…Notwithstanding our preference for a majority of independent directors, a one-third requirement would be a pragmatic, initial step in ensuring board effectiveness. Moving to a board structure comprising one-third independent directors will assist in improving board renewal, as it will introduce new skills onto boards.'
- **Assessing independence – it is 'vital' that a independence is not defined:** GIA states that though a 'strong supporter of assessing independence as a lens for judging director capability…it is not the only indicator of director suitability or capacity…it cannot be assumed that independence of judgment is lost if some of those factors are met'. ON this basis, GIA recommends that the criteria for assessing independence found in the ASX Corporate Governance Council's Principles and Recommendations be adopted and applied.
- **Appointing independent directors:** Governance Institute recommends that:
  - members of superannuation entities should have the right to elect directors via direct voting, but that the decision-making (voting) should not be connected to a statutory meeting
  - employers, unions and employer organisations should not vote, control the voting process or set the rules for voting without approval by members
  - the rules concerning voting should be set out in the constitution of the superannuation fund and made available to members in an easily accessible corporate governance section of the website
  - constitutional amendment should be subject to member approval.

[Source: Governance Institute Submission to the Productivity Commission Draft Report - Superannuation: Assessing efficiency and competitiveness 13/07/2018]

Superannuation cost disclosure: ASIC has released the independent review of *ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* (ASIC Report 581) which makes 34 recommendations on improving transparency for consumers and their advisers.

The Australian Securities and Investments Commission (ASIC) has released an independent, external review (REP 581) of *Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements* (RG

97) which was commissioned in November 2017. The report was written by expert, Darren McShane and involved consultation with 120 stakeholders. The report makes 34 recommendations aimed at improving the way fee and cost information is presented to consumers.

- **Limitations in current approach:** The report notes that the 'Fee Template and the Fee Example within the PDS are the primary comparison tools available to consumers. The report states that though their approach is consistent with international references, they 'suffer from numerous limitations that severely inhibit their ability to support effective cost comparison by consumers'.
- **Disclosure of platform fees to be aligned to that used for MIS and superannuation products:** According to the report, 'many concerns' were raised about how fee disclosure tools apply for Platforms. The report states that disclosure challenges arise for Platforms because of the 'multiple layers of products accessed through the platform which requires that consumers (or their advisors) need to 'appreciate the double layer of fee impact and how to aggregate or disaggregate this disclosure depending on the comparison being made.' The report makes four recommendations intended to improve the fee and cost disclosure for Platforms along similar lines to that used for MIS and superannuation products.
- **Comparison site?** The report includes a recommendation (Recommendation 1) that ASIC undertake a feasibility study into 'whether it or another government agency could provide or sponsor the development of a publicly accessibly consumer facing facility providing fee and cost information extracted from PDSs that can be searched and compared on a range of criteria; and or data about average 'cost of product' figures for specific investment option types that can be included as a reference figures in Fee examples'.

Next steps: ASIC said it will release a consultation paper in the first half of the 2018-19 financial year setting out its proposed response to the issues raised in Mr McShane's report. In the meantime, ASIC said its facilitative compliance approach to fees and costs disclosure will continue with an emphasis on ensuring that consumers are not mislead.

[Sources: 18-217MR External report on fees and costs disclosure welcomed by ASIC; REP 581 Review of ASIC Regulatory Guide 97: Disclosing fees and costs in PDSs and periodic statements]

Initial response to the report

- **Industry Super Australia** public affairs director Matt Linden said: 'This report shows fee disclosure is far too complicated for experts, let alone consumers…We remain concerned that the business practices of platforms are being accommodated rather than prioritising comparable and understandable disclosure for consumers — but we will continue to work with ASIC as it responds to the report.'
- **Australian Institute of Superannuation Trustees** chief Eva Scheerlinck said 'There is no point having disclosure if it is not meaningful for consumer; and added that the report 'vindicates' concerns about fee disclosures. Commenting on Recommendation 1, Ms Scheerlinck reportedly said that any form of comparison tool needed to show long-term net returns, which were the 'ultimate driver' of retirement outcomes. ''
- **Financial Services Council CEO Sally Loane** said: 'The FSC strongly supports transparency and strong governance to deliver best outcomes for consumers and welcomes recommendations focused on simplicity and ease of comparability of products by consumers'.

[Source: [registration required] The Australian 25/07/2018]

- **State Street is reportedly supportive** of the recommendation for a government-run online superannuation comparison site, reports The AFR, but has said it's likely to be difficult to implement. 'To the extent that you can compare fees online, that would be a good thing to do. But it's going to be difficult to try and capture every single expense in a simple online comparison' State Street reportedly said.

[Source: [registration required] The AFR 25/07/2018]

- **Significant delay in making any changes very likely?** Quoting an ASIC representative, the Australian suggests that any changes to RG 97, which have reportedly been under consideration for a significant period, are unlikely to be implemented for some time due to opposition from industry. Reportedly, an ASIC representative said that plans to require superannuation funds to make full disclosure of fees have effectively been delayed, for 'many months, potentially years'.

[Sources: [registration required] The AFR 24/07/2018; Financial Standard 24/07/2018; [registration required] The Australian 24/07/2018; 25/07/2018]

AIST has released new tools and guidance in a bid to raise operational due diligence standards in the superannuation sector in line with APRA's increased focus.

The Australian Institute of Superannuation Trustees (AIST) has reportedly launched tools and guidance to improve the process for funds hiring an investment manager. According to Investment News, the strategy behind the new framework relies on a 'seller-pays' approach under which investment managers engage an independent operational due diligence (ODD) provider to review their processes. They then produce a report that can be given to any super fund considering investing with them, with the investment manager covering the cost of the report.

Earlier this year, APRA put the sector on notice that it would be stepping up the monitoring of operational risk as part of its supervisory activities and the new AIST framework is in line with this.

AIST chief executive Eva Scheerlinck said: 'Every fund has to go out and essentially get the same report from an investment manager. This should [save] time and money for everyone in the system and provide some consistency around the reporting…We can't force anyone to do it but it's helpful that [the Australian Prudential Regulation Authority] APRA has said this framework is a good, cost-effective way for funds to meet their [operational due diligence] ODD obligations'.

[Source: Investment News 24/07/2018]

Other Developments

New Zealand | Revised NZ Banking Code of Practice came into effect on 1 June 2018.

The New Zealand Bankers' Association (NZBA), recently launched a new edition of the NZ Code of Banking Practice setting out what NZ customers can expect from their bank. The new code came into effect on 1 June 2018.

The Code sets out the banking practices that member banks have undertaken to follow. These include: treating their customers fairly and reasonably; communicating with their customers clearly and effectively; respecting their customers' privacy and confidentiality and keep their banking systems secure; acting responsibly if they offer or provide customers with credit and dealing effectively with customer concerns and complaints.

[Source: NZ Bankers' Association: The Code of Banking Practice]

In Brief | The UK Serious Fraud Office is reportedly seeking to reinstate criminal charges against Barclays Bank over its 2008 emergency fundraising from Qatar. Barclays has reportedly said that it plans to defend itself against the SFO application which is expected to be heard in the High Court this year.

[Source: [registration required] The FT 25/07/2018]

Accounting and Audit

United Kingdom | The Financial Reporting Council is consulting on proposed changes to *ISA (UK) 540 Auditing Accounting Estimates and Related Disclosures.*

The Financial Reporting Council (FRC) has launched a consultation on proposed revisions to UK standard (ISA (UK) 540) - *Auditing Accounting Estimates and Related Disclosures*.

The FRC writes that the proposed changes reflect revisions made by the International Auditing and Assurance Standards Board (IAASB), and address issues arising from evolving financial reporting frameworks, particularly the move to accounting for financial instruments on an expected loss basis (which is of particular significance for banks). The FRC adds that it is 'not proposing to add any new UK requirements to the changes made at the international level' and that it is 'able to confirm in the attached impact assessment that no additional work effort, beyond that which may be required by changes in the international standard, is expected to result from regulatory decisions taken by the FRC'.

Proposed implementation date: When finalised, the revised UK standard is proposed to be effective, in line with the international standard, for audits of financial statements for periods beginning on or after 15 December 2019.

Consultation closes 21 September 2018.

[Sources: FRC media release 23/07/2018; Consultation and Impact Assessment: Proposal to revise ISA (UK) 540; Exposure Draft: Proposed ISA (UK) 540 (Revised July 2018)]

In Brief | An FRC report into the quality of audit of pension balances and related disclosures in 51 of its audit inspections in 2017/18 has found that in almost half, improvement was required in at least one aspect of the audit work, as well as identifying areas of good practice.

[Sources: Financial Reporting Council media release 26/07/2018; The Audit of Defined Benefit Pension Obligations]

In Brief | CPA Australia has issued a statement confirming that it will close its CPA Advice arm following the findings of a PwC report that found that the business is not financially viable.

[Sources: CPA Australia: statement form the board 20/07/2018; Accountants Daily 20/07/2018; Independent Financial Adviser 20/07/2018; [registration required] The AFR 24/07/2018]

Risk Management

Whistleblowing

The ACCC has reportedly put in place measures to encourage whistleblowers to report cartel conduct in the agriculture and commercial construction industries.

The SMH reports that the Australian Competition and Consumer Commission (ACCC) has put in place a number of measures aimed at encouraging whistleblowers to report wrongdoing (cartel conduct) in the agriculture and commercial construction industries. More particularly, the measures enable potential whistleblowers to come forward anonymously — to contact an ACCC investigator via anonymous portals — and protect against inadvertent disclosure of potential whistleblowers' identifies through internal measures.

[Note: *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017Whistleblower* is currently before the Senate and includes, among other things, measures to protect anonymous disclosures. See: MinterEllison: *Whistleblower bill update — what you need to know and do next* 24/04/2018]

[Source: [registration required] The SMH 25/07/2018]

Climate

In Brief | Climate disclosure test case: A member and beneficiary of REST Superannuation fund, Mr Mark McVeigh, is taking the fund to the Federal Court over its allegedly inadequate disclosure of its management of climate risk. In a statement to the ABC, REST reportedly said it considered 'environmental, social and governance (ESG) risks in order to deliver competitive long-term investment returns for our members' but this, Mr McVeigh argues is inadequate for him to make an informed decision about his retirement savings.

[Sources: The ABC 25/07/2018; Environmental Justice Australia media release 25/07/2018; Concise Statement: McVeigh v Retail Employees Superannuation Pty Limited]

Cybersecurity

Singapore | The Monetary Authority of Singapore has directed financial institutions to tighten customer verification processes the recent cyber attack at SingHealth where the personal information of 1.5 million individuals was illegally accessed and stolen.

The Monetary Authority of Singapore (MAS) has issued a circular to all financial institutions, directing them to tighten their customer verification processes following the recent cyber attack at SingHealth where personal information of 1.5 million individuals was illegally accessed and stolen.

To address any risk that the information stolen from SingHealth 'may be used by fraudsters to impersonate customers and perform unauthorised financial transactions', MAS has directed financial institutions to tighten their customer verification processes.

Specifically, 'with immediate effect', MAS has directed that:

- all financial institutions should not rely solely on the types of information stolen (name, NRIC number, address, gender, race, and date of birth) for customer verification;
- additional information must be used for verification before undertaking transactions for the customer. This may include, for instance, One-Time Password, PIN, biometrics, last transaction date or amount.

MAS has also directed all financial institutions to conduct a risk assessment of the impact of the SingHealth incident on their existing control measures and to take immediate steps to mitigate any risks that may arise from the compromised information. MAS writes that it will engage financial institutions on their risk assessments and mitigation steps.

MAS Chief Cyber Security Officer Mr Tan Yeow Seng, said, 'MAS will work closely with the financial institutions to ensure that robust cyber defences are in place so that customers can carry out online financial transactions with confidence. But customers must also play their part. They must safeguard their passwords and practise good cyber hygiene. If they suspect any fraudulent transactions in their accounts, they should notify their banks immediately.'

[Sources: Monetary Authority of Singapore media release 24/07/2018; Finextra 25/07/2018]

Other Developments

The Papa John International Inc board have reportedly voted to adopt a 'poison pill' to prevent the company's founder, John Schnatter, from gaining a controlling interest in the firm.

The WSJ reports that the Papa John's International Inc board has voted to adopt a 'poison pill' to prevent its founder, John Schnatter, from gaining a controlling interest in the firm and has suggested that he resign from the board.

Mr Schnatter recently stepped down as Chair and issued an apology, following reports that he used a racial slur during a conference call (see: Governance News 16/07/2018). Mr Schnatter has reportedly said since that he regrets his decision to step down.

According to The WSJ, Mr Schnatter owns 29% of Papa John's shares and has indicated that has no intention of ceding control of the company.

[Source: [registration required] The WSJ 22/07/2018]

Recent controversies have highlighted the risks of having CEO/Chair as chief spokesperson? Citing recent examples or companies in which CEO spokespeople have 'garnered criticism' for their comments — Mark Zuckerberg (Facebook), Elon Musk (Tesla) and John Schnatter (Papa John's) — The WSJ writes that there is significant risk for companies where their chief spokesperson is also their Chair/CEO. The article adds that in these circumstances, it is the role of the board to keep the CEO/Chair in check.

[Source: [registration required] The WSJ 24/07/2018]

Japan | Yamato Holdings has admitted to overcharging 80% of corporate clients for moving services offered through a subsidiary. The company has reportedly apologised and said that it will not accept new corporate moving contracts until safeguards are installed to prevent a recurrence of the issue.

Yamato Holdings has reportedly overcharged corporate clients by roughly 1.7 billion yen in total for moving services offered through a subsidiary. The excessive fees reportedly cover around 40% of contracts signed since May 2016 (48,000) and affect 80% (2,640) of corporate clients.

The company apparently charged these clients based on pre-calculated estimates, even when it transported less volume than initially planned. Padding the charges in this way reportedly enabled 'several employees' to 'boost their performance' though President Masaki Yamauchi has reportedly said that the company did not 'direct this to happen'.

Reportedly the company has apologised to the clients and has committed to reimburse them for the overcharges. The company has also reportedly said that retail customers face little risk of the same problem as 'they can confirm on the spot whether their bill matches the actual move'.

The company has reportedly created a team to uncover all details of the issue and devise a response and the company has said that it will not accept new corporate moving contracts until it installs measures to prevent the problem from recurring.

The Tokyo-based company is still determining how the scandal will impact results for the current fiscal year ending in March.

[Source: [registration required] Nikkei Asian Review 25/07/2018]

Restructuring and Insolvency

In Brief | ASIC announced that the Federal court has made orders winding up five companies for their role in the operation of two Victorian land banking projects. ASIC states that it sought the orders as it was concerned that the four of the companies 'were insolvent, that money raised from investors (more than $15m) had been transferred between companies without any apparent concern for obligations owed to investors and that the majority of funds raised from investors had been dissipated'. The fifth company consented to the winding up order being made, the court finding that its financial affairs were 'inextricably bound up with those of the other companies Project Companies; that PMA had control over investor monies; it had intermingled funds and used them across the various land banking schemes; it had maintained poor documentation; and it took management fees out of the investor funds released to it'.

[Source: 18-221MR ASIC winds up five companies involved in Victorian land banking projects]