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Remuneration

Top Story | Time for the financial services sector to embrace fixed remuneration? A study by Macquarie University has found that fixed remuneration (not variable remuneration) is the most effective in promoting compliance and that payment of bonuses does not translate into productivity gains.

Macquarie University's Applied Finance Centre has released the findings of a study: *Behaviour of Finance Professionals under the Balanced Scorecard* which investigated the effectiveness of the 'balanced scorecard' in promoting compliance with company policies in financial institutions. The findings of the study call in to question the continued use of the ‘balanced scorecard’ for remuneration purposes.

Context

What is the balanced scorecard? The balanced scorecard refers to a system of performance measurement used by firms to measure/assess employee performance against both financial and non-financial measures. This approach is intended to promote compliance with what may be competing priorities e.g. adherence to company policy vs. selling product. In an Australian financial institution, the typical balanced scorecard has multiple performance criteria of which some are financial (e.g. sales/profits) and some but are non-financial (e.g. customer satisfaction, compliance with policy, and behaviour consistent with company values).

The study notes that the Sedgwick review of remuneration recommended that variable remuneration should not be based solely on financial measures, though the study questions the basis for this recommendation in driving stronger compliance outcomes.

The study also notes that the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) has identified a number examples of misconduct resulting in adverse customer outcomes where balanced scorecards were in place and the Commission's Interim Report, found that in practice, and despite appearances to the contrary, balanced scorecards continue to be dominated by sales criteria with minimal importance accorded to other criteria.

Two Key Findings

1. **Overall, the study found that fixed remuneration structures achieved higher rates of compliance than balanced score cards.** Under a fixed remuneration structure, 75% of participants were completely compliant with policy across all transactions. Under a simplified balanced scorecard, compliance rates fell to 62%. This further decreased under the compliance gateway to 51%. ' This suggests that the Balanced Scorecard is significantly less effective than fixed remuneration with regard to compliance outcomes' the report concludes.
2. **No productivity gain with balanced scorecards?** The study found that there was no significant uplift in productivity where balanced scorecards were used relative to fixed remuneration. That is, employees appear to work just as hard when paid a flat salary as when they receive a financial incentive/bonus. Study author, Professor Elizabeth Sheedy is quoted in The AFR as commenting in relation to this that 'This research debunks the sacred cow that there has to be incentives or employees will not work hard'.

Conclusion: Time to rethink the use of balanced scorecards for remuneration purposes?

Given the findings, Professor Sheedy suggests that 'it seems appropriate for the financial services industry to reconsider the use of the balanced scorecard for remuneration purposes'. Separately, Professor Sheedy is quoted in media reports as commenting that: 'based on this study, my previous research, the research of other academics, and the case studies presented by the Royal Commission, it is becoming increasingly difficult to justify the use of variable remuneration in financial services…I hope industry leaders and regulators will seriously consider this issue as we continue to do research in this crucial area of performance measurement and remuneration'.

About the study

The study was jointly funded by Deloitte Australia and the Insurance Council of Australia and assisted by The Australia and New Zealand Institute of Insurance and Finance and Financial Services Institute of Australia (Finsia). It was led by Professor Elizabeth Sheedy.

[Source: [registration required] Sheedy, Elizabeth A. and Zhang, Le, Behaviour of Finance Professionals Under the Balanced Scorecard (November 13, 2018). Available at SSRN; Investor Daily 21/11/2018; Financial Standard 20/11/2018; [registration required] The AFR 18/11/2018]

Domain shareholders have approved the sign-on deal for new CEO Jason Pellegrino which includes a cash bonus of $500,000 and shares worth $2 million

Mr Pellegrino, who joined Domain in late August, will be paid a cash bonus of $500,000 on 31 December unless he is no longer employed by Domain on that date (as previously disclosed by the company). He will also be allocated shares equivalent to $2m, which will vest on the second anniversary of his employment, subject to him remaining an employee of the company. The resolution to award Mr Pellegrino the shares was passed at the 20 November AGM, with 91.8% investor support.

The Australian reports that when asked by shareholders at the meeting about the share allocation to Mr Pellegrino, Domain Chair Mr Falloon said the allocation would merely replace what Mr Pellegrino would have been paid, had he stayed at his former employer Google. 'Every one of the people that we were thinking about or interviewing for this position [the CEO role] had something similar, if not more. It is quite common to have to make sure that the person that you're trying to attract does not lose out' he reportedly said.

[Sources: [registration required] The Australian 21/11/2018; ASX announcement: 2018 AGM results 20/11/2018]

In Brief | France to penalise firms who pay women less? The WSJ reports that from 1 January, French firms will be required to report on their gender pay gap using a range of government-approved metrics . Firms will then have three years to reduce the gap to zero or potentially face a fine of up to 1% of their total payroll (currently the average gap is 9%). Labor Minister Muriel Pénicaud is quoted as saying that the focus on enforcement is aimed at driving results 'as I tell companies, instead of giving your money to the government, give it to women, it's smarter' she said.

[Source: [registration required] The WSJ 18/11/2018]

Institutional Investors and Stewardship

Aberdeen Standard Investment has reportedly called for more 'prescriptive' ASX guidelines to better 'entrench the concepts of corporate social responsibility in Australian boardrooms'

The Australian reports that Aberdeen Standard Investments, head of corporate governance equities in Asia Andrew Preston has given an interview in which he has called on the ASX Corporate Governance Council to 'issue more prescriptive guidelines to better entrench the concepts of Corporate Social Responsibility' in boardrooms. 'If everyone was conducting themselves the way they should be in business, there wouldn't be any requirement for an ESG (environmental, social and governance) industry at all…But there is. There should be more responsibility on companies themselves trying to do a better job looking after their employees and stakeholders of all sorts' he is quoted as stating.

[Note: The ASX Corporate Governance Council consulted on proposed changes to the Corporate Governance Principles and Recommendations (fourth edition) earlier in the year. The consultation draft retained the same eight core principles in the third edition, but also included significant proposed changes to principle 3 (a listed entity should act ethically and responsibly) to 'address emerging issues around corporate values and culture, and social licence to operate' the Council said. It was proposed to re-word this principle as 'a listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and in a socially responsible manner'. The final version of the revised Principles and Recommendations is expected to be released in early 2019. See: Governance News 04/05/2018. The Council has indicated that the final version may differ from the consultation draft in response to feedback received during the consultation process (see: Governance News 13/08/2018). The proposed changes have sparked considerable debate see: Governance News 06/08/2018, 13/08/2018.]

Commenting the financial services sector more specifically, Mr Preston reportedly said investors like Aberdeen (which holds shares in AMP and the big four banks) are looking for signs the banks are prioritising compliance 'and that they can demonstrate change to us as investors'. 'Fundamentally we all invest in these companies to build assets for our retirement or some other savings purpose. We want them to be profitable and efficient. But we need to have some acceptance by the companies that they have a broader role in society now. In many respects corporate boards need to regain the confidence of investors and customers' he said.

[Source: [registration required] The Australian 21/11/2018]

Meetings and Proxy Advisers

ESG resolution at Woolworths: ACCR's supply chain resolution at Woolworths received 14.92% proxy support

The Australasian Centre for Corporate Responsibility (ACCR) lodged two shareholder resolutions at the recent Woolworths AGM. Namely:

- Special resolution to amend the company's constitution: a binding resolution to amend the constitution to allow for the submission of non-binding advisory shareholder resolutions. (Contingent on the constitutional amendment, one further advisory resolution was also submitted).
- Supply chain management strategies: A second resolution calling for the implementation of a labour hire pre-qualification program mutually agreed upon by the National Union of Workers (NUW) and Woolworths; mandated trade union involvement in grievance procedures and worker education; and regular disclosure of progress against these items to shareholders.

ACCR writes that the objective of the resolution was to ensure 'Woolworths fulfils the commitments the company made in 2017 to work with the NUW to implement a series of changes to Woolworths' supply chain management strategies designed to address the severe labour rights violations documented at Woolworths' supplier farms across Australia, thereby mitigating a multitude of associated business and operational risks'.

Commenting on the resolution, in his opening address to the Woolworths AGM held on 21 November, the Woolworths Chair said that management opposed the resolution on the basis that the company has made 'significant progress' over the past 12 months on the issue, and on the basis that it remains committed to putting in place the 'right protections for workers' within the supply chain. He added that the company stands by its 2017 commitment to 'work collaboratively on a pre-qualification labour hire program' for the fresh food supply chain and outlined progress achieved over the last 12 months. He also committed to publishing an update on progress on these initiatives in the 2019 sustainability report.

The proxy voting results on the resolution were: 5.79% for the constitutional amendment and 14.92% for the supply chain strategies resolution.

[Sources: Woolworths Group Ltd ASX Announcements: Shareholder resolutions constitutional change and human rights in operations and supply chains 25/09/2018; Chair and CEO's address to 2018 AGM 21/11/2018; AGM presentation 21/11/2018; AGM results 2018 21/11/2018; The SMH 21/11/2018]

Do proxy firms exert too much influence or not? To coincide with the SEC Roundtable on Proxy reform, the American Council for Capital Foundation has released a report arguing there is a need for more stringent regulatory oversight of proxy firms given their level of influence. Separately, Glass Lewis has taken the opposite view.

[Note: The US Securities and Exchange Commission (SEC) Proxy Roundtable on possible changes to proxy regulation and the proxy process was held on 15 November. The agenda for the roundtable was outlined in Governance News 12/11/2018.]

The American Council for Capital Formation has released a report: *The realities of robo voting*, which found that the practice of 'robo voting' – where entities automatically voted in line with proxy recommendations rather than assessing proxy recommendations in light of company specific considerations and the best interests of their clients - is a 'problem' across different types of asset managers, including pension funds, private equity, and diversified financials. Specifically, the report found evidence that Institutional Shareholder Services (ISS) wields significant influence: 175 US entities, representing more than $5 trillion in assets under management, follow the ISS' voting recommendations over 95% of the time.

Given this, and in light of concerns regarding the accuracy of proxy reports and the limited window companies have to respond, the report argues that influential proxy advice firms should be subject to more stringent regulatory oversight to the same level as mutual funds. ‘It seems out of sync with effectively functioning capital markets that proxy advisory firms remain unregulated, despite essentially representing trillions of assets at the annual shareholders meetings of US corporations…Robo-voting enhances the influence of proxy advisory firms, undermines the fiduciary duty owed to investors; and poses significant threats to both the day-to-day management and long-term strategic planning of public companies' the report argues.

[Sources: American Council for Capital Formation media release 09/11/2018; ACCF report: The Realities of Robo Voting; [registration required] The FT 18/11/2018]

Proxy firms do not wield too much influence? Proxy firm Glass Lewis released their statement submitted to the Securities and Exchange Commission (SEC) ahead of the roundtable challenging the need for proxy reform, opposing further regulation (and more particularly the Bill (discussed in a separate post below) and responding to concerns regarding the methodology and accuracy of proxy reports, concerns over transparency of the process and clarifying what it sees as its role. The statement also challenges the view that proxy advisers wield too much influence, on the basis that recommendations are not , according to Glass Lewis’ analysis, always followed.

[Sources: Glass Lewis blog 15/11/2018; SEC Staff Roundtable on the Proxy Process – File Number 4-725 14/11/2018]

Should proxy firms be subject to the same requirements/oversight as investment advisers? A US Senate Bill has been introduced proposing to extend the existing regulatory regime that applies to investment advisers to proxy firms.

On 14 November six US senators introduced a Bill (*S.3614 — Corporate Governance Fairness Act*) that proposes to amend the *Investment Advisers Act of 1940* to require proxy advisory firms to register as investment advisers (i.e. to extend the existing regulatory regime that applies to investment advisors to proxy firms). Senator Jack Reed emphasised that under the proposed Bill all major proxy advisory firms will be on the same footing as financial advisers and as such, will have a fiduciary duty to their clients. He added 'The Congressional intent of this legislation is to preserve the critical role played by proxy advisory firms and to hold them accountable to investors'.

Commenting on the timing for introducing the Bill (the day prior to the United States Securities and Exchange Commission (SEC) Roundtable on the Proxy process), Senator Reed said that it is intended to send a 'strong signal' to SEC that 'robust oversight of proxy advisory firms' is expected/supported by the Bill sponsors.

Proxy firms are not analogous with investment advisers? Commenting the Bill, Glass Lewis argues that 'the rationale for the Senate bill is questionable' on the basis that it 'possibly' rests on a misunderstanding of how investors use proxy analysis and voting recommendations and that 'it's not clear that requiring proxy advisory firms to register as investment advisers…would provide any new meaningful protection to investors and issuers'. Glass Lewis adds that the regulatory regime that applies to investment advisers is not suited to the 'nuanced activities of a proxy advisory firm' as proxy advisers 'neither advise their clients whether to purchase, sell or hold securities nor do they manage investments'.

Glass Lewis suggests that a better approach may include 'validating the standards of conduct already implicitly enforced by the industry, coupled with a mechanism to monitor and ensure compliance'.

[Sources: S.3614 Corporate Governance Fairness Act (2017-2018); Senator Jack Reed media release 14/11/2018; Glass Lewis blog 15/11/2018]

Proxy firm ISS has released 2019 benchmark policy updates: gender diversity is a priority in the US, and in Europe/UK changes to policies reflect growing investor concern over audit quality.

Proxy adviser Institutional Shareholder Services Inc. (ISS), has released updates to its 2019 benchmark proxy voting policies ahead of the 2019 proxy season. The revised policies will apply to shareholder meetings after 1 February 2019.

Some Key Changes

United States

- **Gender diversity:** ISS announced a new voting policy which will be effective for meetings on or after 1 February 2020, and will be applicable for companies in either the Russell 3000 or S&P 1500 indices. Under the revised policy, adverse voting recommendations may be issued against nominating committee chairs at boards with no gender diversity (zero female directors on the board) on a case by case basis. ISS writes that the 12 month 'grace period' before the new policy is applied will allow boards who wish to do so time to recruit qualified female candidates.
- **Changes to financial performance assessment methodology:** During the 2019 annual meeting season, ISS research reports on companies in the US and Canada will feature Economic Value Added (EVA) data as a supplement to GAAP-based measures. Moving into 2020, ISS will consider the inclusion of EVA-based measurements as part of its Financial Performance Assessment methodology.

UK, Ireland and Continental Europe

- **Audit quality:** For its UK/Ireland and Continental European policies, in 2019, ISS will track significant audit quality issues, with a focus on accounting controversies at the lead engagement partner level, wherever such information is available. Where the information is available, ISS research reports will note any lead audit partners who have been linked with significant auditing controversies and, where they are also identified as being engaged in the audit for other public companies, this connection will be raised for investor attention. A negative vote recommendation on auditor ratification may be applied in the most serious cases, e.g. where the lead audit partner has previously been linked with a corporate failure scenario or other material destruction of shareholder value arising from fraud or other accounting issues.

Japan

- **Board Independence:** In Japan, ISS is implementing a new independence criterion for Japanese company directors and statutory auditors. ISS will classify both directors and statutory auditors who work (or worked) at companies whose shares are held by the company in question as 'cross-shareholding shares' as non-independent directors.

Other changes

The ISS benchmark policies as updated heading into 2019 also cover board gender diversity in Canada, director independence and tenure in Latin American markets, audit committee independence across Europe, board independence and disclosure in Taiwan, and both auditor fees and audit committees in the India and Asia Pacific regions.

[Source: ISS media release 19/11/2018]

Related News: Glass Lewis' 2019 Proxy Advice Guidelines (United States) also include changes to policies in relation to diversity and audit. In relation to audit, among the additional factors Glass Lewis will now consider are auditor tenure, a pattern of 'inaccurate audits' and 'ongoing litigation or significant controversies which call into question an auditor's effectiveness' which could lead Glass Lewis to recommend against auditor ratification.

[Source: Glass Lewis 2019 Proxy Paper Guidelines United States]

Disclosure and Reporting

Hong Kong | HKEX's annual review of compliance with the Corporate Governance Code has found reported compliance remains high with 100% of issuers reporting compliance with 70 of 78 Code Provisions

The Stock Exchange of Hong Kong Limited (HKEX) has completed its 2017/2018 review of issuers' compliance with the Corporate Governance Code and Corporate Governance Report (Code).

The 2017/2018 Review involved analysing the disclosures made by 400 randomly selected issuers ('Sample Issuers'), of which 300 had a financial year-end date of 31 December 2017, and 100 with financial year-end dates of 30 June 2017 and 31 March 2018.

Some Key Findings

- Levels of compliance remained high with 36% of issuers reporting compliance with all 78 Code Provisions (CPs) (up from 34% in 2016). Compliance with 70 (or more CPs) was 100% (unchanged from 2016).
- Larger companies reported higher levels of compliance: Large-cap issuers achieved the highest rate of 'full compliance' (compliance with all 78 CPs) at 48% followed by mid cap (35%) and small cap issuers (35%).
- The CPs with the lowest compliance rate was A.2.1 which provides that the roles of Chair and CEO should not be held by the same individual (64%). This was followed by: A.4.1 which provides that non-executive directors should be appointed for a specific term (85%) and A.1.2 Chair's attendance at general meetings (90%).

[Source: HKEX: Analysis of corporate governance practice disclosure in June and December Year End 2017 and March Year End 2018 Annual Reports November 2018]

United States | The WSJ reports that SEC Chair Jay Clayton has called on companies to provide more detailed disclosure on Brexit risk.

The US Securities and Exchange Commission (SEC) Chairman Jay Clayton has reportedly identified disclosure of risks in relation to the UK's exit from the EU as an area of focus for the regulator at a recent conference (the Current Financial Reporting Issues Conference) . 'I would expect companies to be looking at this closely and sharing their views with the investment community' Mr Clayton reportedly said.

[Sources: [registration required] The WSJ 12/11/2018; 13/11/2018]

Financial Services

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

Top Story | Financial Services Royal Commission Round 7 (policy) hearings: Week 1

Royal Commission Round 7: Week 1, 19 November – 23 November

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) commenced its seventh and final round of public hearings on 19 November. The focus of this round of hearings, which will run until 30 November, is on the policy questions arising from the first six rounds of hearings. More particularly, the focus of the hearings will be on the causes of misconduct and conduct falling below community standards and expectations by financial services entities (including culture, governance, remuneration and risk management practices), and on possible responses, including regulatory reform. In addition, the hearings will consider the role of the regulators, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) in supervising the actions of financial services entities, deterring misconduct by those entities, and taking action when misconduct may have occurred.

A high level overview of the issues to be explored during the hearings as highlighted by Counsel Assisting Rowena Orr QC in her opening statement to the Commission and of some of the issues arising in the course of questions to CBA Chair Catherine Livingstone, and CBA CEO Matt Comyn, Westpac CEO Brian Hartzer and Macquarie CEO and Managing Director Nicholas Moore is below.

Opening statement

- **Causes of the misconduct and how future misconduct can be prevented in future:** Counsel Assisting Rowena Orr QC said that the focus of this round of hearings would not be on identifying 'further instances of misconduct' but rather on 'understanding why misconduct has occurred and on what can be done to prevent future misconduct'. She added that 'The purpose of this round of hearings is not to hear further apologies, or expressions of regret'.

- **Questions to be considered over the course of the hearings**:
  - **Causes of the misconduct:** Ms Orr said that the Commission would explore whether misconduct is attributable to:
    - risk management, recruitment, or remuneration practices;
    - the culture of financial services entities or their governance practices;
    - practices common to the financial services industry or to specific parts of that industry.
  - **Consideration of changes to prevent a reoccurrence of misconduct in future:** Ms Orr said that the causes of the misconduct would inform consideration of whether changes are required. Ms Orr added that consideration would be given to whether the regulators need to change, whether new mechanisms for oversight of the regulators is justified, whether there are barriers to financial services entities and regulators improving their own practices and if so, how these could be removed.

Submissions received

- **Over 2000 submissions received:** Ms Orr said that the Commission received close to 2000 policy submissions from financial services entities, consumer advocacy groups, regulators, government, academics, industry organisations, community organisations, and members of the public in response to the policy questions identified in the Interim report and in response to Round 5 (superannuation) and Round 6 (insurance).
- **'Divergence' of views in submissions, but also 'substantial agreement' in some areas:** Ms Orr said that across the submissions, 'there is considerable divergence in views about the need for reform and the manner in which any reforms should occur, but that there were also are a number of areas in which there was 'substantial agreement'.
- **Ten examples on which there was 'substantial agreement' across submissions**:
  - **Simplification of the law:** Ms Orr said that there was 'widespread support for simplification of the law' across submissions.
  - **Clarification of the duty owed by a mortgage broker to their clients:** Ms Orr said that there was 'substantial agreement that the duty owed by a mortgage broker to their clients would benefit from clarification'. Ms Orr noted however that 'views were divided about the precise ways in which the duty should be clarified'.
  - **Ending grandfathered commissions:** Ms Orr said that there was 'very strong support for ending grandfathered commission payments to financial advisers and from superannuation accounts'. Ms Orr added that each of the major banks has already announced steps to reduce or eliminate grandfathered commissions in their financial advice businesses, and that they (along with other industry participants) had expressed support for legislation to repeal the grandfathering provisions under the *Corporations Act 2001 (Cth)*. Ms Orr said that the Association of Financial Advisers (AFA) was alone in its opposition to ending grandfathered commissions.
  - **Simplification of disclosure requirements:** Ms Orr said that there was 'broad support for further simplification of disclosure requirements' with some submissions suggesting that the current extensive and complex disclosure requirements may actually make it more difficult for consumers to understand the information being made available to them. Ms Orr noted that some consumer groups had warned that 'simplification should not result in consumer protections being watered down. Some consumer groups also emphasised that disclosure alone would not prevent most of the types of misconduct examined by the Commission'.

- **Support for a national farm debt mediation scheme and measures to improve accessibility of banking services in remote/regional areas:** Ms Orr said that there was 'strong support across the major banks' for a number of measures to assist those in regional and remote areas and to improve the accessibility of banking services. For example, there was widespread support for a national farm debt mediation scheme (to be modelled on the existing NSW scheme), although some suggested that creating a national system would offer an opportunity to identify the best practice components of the existing Acts and consider alternative approaches. There was also support for the use of dedicated staff to assist Indigenous customers, ceasing any practice of charging a dishonour fee on a no fee or low fee account, and ceasing the practice of charging default interest on loans in drought declared areas or in areas where some other natural disaster had occurred.

- **Funeral insurance:** Ms Orr said that there 'was almost universal support to bring expenses only funeral insurance within chapter 7 of the Corporations Act and the consumer protection provisions under division 2 of part II of the ASIC Act'.

- **Civil penalties for breach of SIS Act obligations:** Ms Orr said that there was 'widespread support for legislative changes to impose civil penalties for a breach of the requirements in the SIS Act that the trustee of a superannuation fund or directors of the trustee perform their duties and exercise their powers in the best interests of beneficiaries'.

- **Add-on insurance:** Ms Orr said that there was 'support from several major banks and industry groups for certain forms of add-on insurance to be sold only through a deferred sales model'.

- **Extension of UCT provisions to insurance contracts:** Ms Orr said 'there was broad support for extending the unfair contracts terms provisions to insurance contracts, including from ASIC a number of consumer bodies, and most insurers'.

- **Introduction of a compensation scheme of last resort:** There was also substantial support for the introduction of a compensation scheme of last resort, which would provide compensation where consumers had a valid claim against a financial services provider but could not get the claim paid, for example because an advice firm had become insolvent.

Commonwealth Bank of Australia (CBA)

As flagged, in her opening statement, Counsel Assisting Rowena Orr QC's questions to CBA CEO Matt Comyn and CBA Chair Catherine Livingstone focused on the reasons why issues occurred, the management/response to those issues and the steps implemented or in the process of being implemented to ensure that there is no reoccurrence.

Remuneration of bank staff, mortgage brokers and executives

- **Payment of variable remuneration to frontline staff:** Mr Comyn was asked to explain why CBA uses short term variable remuneration for front line staff. He responded that CBA regards this form of remuneration as 'important' both for 'eliciting discretionary effort' (‘the difference between what they might have otherwise done, if – if they were paid a fixed remuneration, versus if they had at least a proportion of their remuneration that was in addition to what they could earn from their fixed remuneration) and as an accountability mechanism (i.e. a means of making clear 'consequences' for poor conduct to individuals). He acknowledged that there are 'multiple ways to motivate staff' and also that there are a number of other mechanisms to impose consequences for poor conduct, and also that variable remuneration could 'drive perverse outcomes' if poorly designed. Though consideration had been given to moving away from variable remuneration, the Commission heard that it remains in place to date at CBA.
- **Broker remuneration:**
  - **Flat fee model?** The Commission heard that consideration had been given by CBA to moving away from a commission based model (including payment of upfront and trailing commissions) but that to date, no move has been made. When asked whether he would like to move to a flat fee model Mr Comyn agreed that this was the case, but that in the absence of regulatory intervention, it would be unlikely other lenders would follow. His preferred model, were a flat fee model implemented, would be the model used in the Netherlands whereby the customer pays a flat fee upfront.

- **Sedgwick Review implementation:** Asked what plans were in place at CBA to implement recommendation 18 of the Sedgwick Review (removal of the link between loan size and payments to brokers), the Commission heard that CBA is waiting on the Commission's recommendations before formulating a plan as to how to implement the change.
- **Banning trail commissions:** Asked whether trail commissions should be banned, Mr Comyn agreed that they should be banned as part of a more 'holistic review' of the payment model for brokers. He added that the abolition of train commissions for brokers, in his view, requires legislative change.
- **Extension of the best interests duty to brokers:** Also on the topic of brokers, Mr Comyn expressed agreement that the best interests duty (for brokers to act in the best interests of their customers) should be extended to cover brokers as a means of addressing potential conflicts of interest. Asked whether he agreed with brokers that this would be 'very onerous' for them, Mr Comyn said that it 'didn't seem overly onerous to me'.

  Counsel Assisting noted that the Combined Industry Forum (CIF) has not supported the extension of the best interests duty, but instead had advocated a 'customer first duty' which, though still in development, would require customers' interests to be placed above those of the providers or those of their organisation, based on the information reasonably known to the provider at the time of providing the service. Mr Comyn confirmed that this was case, adding that the 'obligations as they apply to a financial adviser should not necessary just transfer over' to brokers, though the duties and expectations on the broker are 'similar to a financial adviser'. Asked whether he viewed the 'best interests' duty as 'underpinning' both the duty of the financial planner or adviser and the duty of the mortgage broker, Mr Comyn said that he agreed that this was the case.

▪ **Payment of variable remuneration to executives**

- **Why variable remuneration is necessary:** CBA Chair Catherine Livingstone was asked why executives are paid any variable remuneration (rather than an 'appropriate salary'). Ms Livingstone explained that the 'balanced scorecard' (which includes financial and non-financial measures of performance) indicates to executives 'very clearly…that we expect balanced outcomes across financial outcomes, customer outcomes, people and strategy'; that variable remuneration enabled the board to highlight priorities; that it ensures alignment within the risk management framework; that it enables CBA to reward executives based on their performance and that in relation to deferred remuneration, that it enables CBA to 'deliver consequences' where necessary. Ms Livingstone disagreed that fixed remuneration would achieve the same objectives.
- **Use of total shareholder return (TSR):** The Commission heard that CBA's long-term variable remuneration framework places 'significant' emphasis one measure, total shareholder return (TSR). Counsel Assisting noted that in April 2018, APRA released a report into remuneration practices at large financial institutions which expressed concern about 'excessive' emphasis being placed on this measure, and that the UK Prudential Regulation Authority (PRA) had expressed similar concerns on the basis that 'measures like total shareholder return are not suitably adjusted for long-term risk factors, and may incentivise highly leveraged activities the use as a measure of performance on the basis that excessive focus on this measure'. Ms Livingstone was asked whether in light of this she considered it 'appropriate to have such a large proportion of the long-term incentive for your group executives depend on a purely financial matter'. Ms Livingstone said 'I think as reflected in our structure at the moment, we do think that that is – it's a measure we can use.'
- **Consideration of CEO remuneration recommendations:** Counsel Assisting also asked a series of questions challenging the approach by the remuneration committee (in the past) to considering the appropriateness of CEO recommendations regarding risk adjustments to executive remuneration, whether there was sufficient detail provided to enable the committee to form a view, whether sufficient time was allowed for consideration and discussion of the recommendations (10 minutes was allowed in the example under discussion) and whether the committee sufficiently challenged the recommendations.
- **Commissioner's comments on the communication of remuneration decisions in the annual report:** The Commissioner queried how clearly decisions about remuneration (and therefore what the organisation values and does not value) is communicated in the annual

report: ‘How does what appears in the annual report help to convey to the whole of the organisation what it is that the board is saying to the senior leadership team about what is valued, what is not valued, what is deprecated, what will be condemned?’ he asked. He went on to query why the reasons behind decisions were not made more apparent: ‘And isn’t that message of why an important message to send down through the organisation, the senior leadership team has been docked X per cent, Y dollars, whatever it is, because what this organisation values is this, and what it will condemn is that. Now, you say communication to staff is something to look at. It’s a one-page document, isn’t it? A fairly simply – not simply written; it’s a document that’s written simply, which is a radically different task. It’s a document that should be available to the most junior teller, isn’t it?’ he asked. To which Ms Livingstone agreed.

Culture

- **Level of board oversight required?** Commissioner Hayne asked Ms Livingstone: 'how important is it that the board be aware of a number of species of conduct': a) intentional conduct; b) unintentional behaviour, c) 'the careless, the silly' conduct that may lead to 'unintended consequences'; and d) positive conduct (conduct where staff have 'done something that has gone well and truly beyond what they need to'. Ms Livingstone responded that 'the board has to be aware across all four of those that you describe to different levels' in particular, she said that the board 'needs to know about every example of wilful misconduct'.
- **Tone from the top:** Counsel Assisting asked for Ms Livingstone's views on the importance of the tone that the board sets in relation to the management and importance of misconduct and compliance issues. Ms Livingstone said that in her view, the 'tone from the top' has significant influence on the culture of an organisation and more particularly, that the tone set by the board could influence 'the behavioural norms, what’s acceptable, what’s not acceptable. It can influence the systems, in the sense of investment in systems or not investment. It can influence the policies, as we have done, by requesting that there be a complete review of the policy framework and rewrite, and simplification'.
- **Measurement of culture:** Asked whether she thought culture was difficult to measure, Ms Livingstone agreed that it is, but that the task of assessing it could be facilitated by breaking it down into 'four elements' (behavioural norms, the conduct, the effectiveness of policies, and whether effective processes are in place). Asked what indications would demonstrate to her satisfaction, positive cultural change at CBA, Ms Livingstone said: 'I want to see that our code of conduct is actually lived. And I want to see that people are actually disciplined through their — the policy environment, so they understand what it is they have to do, and their duties….that we have systems that are all fit for purpose. And in all of that, I would like to see more situational awareness' [immediate reaction to something that is 'not right,' or something that 'might be wrong'.] Asked how she would achieve situational awareness, Ms Livingstone said that CBA is it is a work in progress.
- **Culture of challenge:** Ms Livingstone said that historically the board had 'not sufficiently challenged' management, that follow up on issues had been slow and that the board had relied too extensively on the assurances of the executive team. There was 'Insufficient challenge and, again, as the inquiry highlighted, too much store placed in assurances from management, which has, effectively, then led to insufficient challenge' she said. Asked about the changes she had implemented since becoming Chair in relation to these issues, Ms Livingstone identified the following: changes to the composition of the board (to change the way in which the board challenged management); the 'complete change in the management team' (including the appointment of a new CEO); changes to ensure there was more time allocated for consideration of important issues in meetings, a greater focus on accountability (in the context of discussion about strategic, operational and compliance issues) and improvements in the board papers as well as a greater focus on customer complaints analysis in board reports. Ms Livingstone said that as a result of these, and other changes, 'the degree of challenge at the board is significantly greater, and the non-acceptance of assurances, in the sense of it’s more of a show me, don’t tell me. So we seek much more evidence of what actually has been done. And there’s more urgency in terms of closure of the issues and less acceptance of long timeframes for closure'.
- **Minutes of meetings:** The Commission heard that the minutes of meetings did not reflect Ms Livingstone's account of some board discussions and more particularly, that they did not appear to record discussion of some 'significant matters'. Ms Livingstone responded that the minutes did not reflect the exchange (under discussion), but that the exchange did occur 'it’s not possible for minutes

to record every single question in a board meeting, and most of the questions are, in fact, very serious questions. That is the purpose of the board meeting' Ms Livingstone said. Counsel Assisting appeared to suggest that this omission may have constituted a failure to comply with the requirement in relation to the keeping of minutes under the relevant section of the Corporations Act. Ms Orr said '…Failure to comply with the requirements in relation to the keeping of minutes under section 251A of the Corporations Act is an offence?... I'm not expecting the minutes to record verbatim what was discussed, Ms Livingstone. The keeping of accurate minutes of the board of an organisation like CBA is very important because those minutes are the evidence of the matters that are discussed in the meeting?'. The completeness of information provided to the board in information packs/reports, as well as the length of time devoted to important issues at meetings was also questioned by Counsel Assisting.

- **Director induction programs:** In the context of the issue of ensuring new directors are well prepared/informed about what may be ongoing issues for an organisation, the Commissioner observed that 'it does take a new director some months to become aware of what issues are alive and running within the organisation' and that other 'organisations are used to assembling briefing papers to allow newly joining members to know what the current issues are'. Asked whether this is 'not a practice that could be applied and modified' Ms Livingstone agreed that it is and that CBA has reviewed the director induction program to ensure it is 'a more fulsome induction than it has been in the past, because the briefing pack that was provided was more a description of the organisation and how it runs, as distinct from the issues'. Going forward, Ms Livingstone said that this would be the CBA's practice.

Westpac

Questions to Westpac CEO Brian Hartzer also focused on the causes of past issues and changes implemented to prevent their recurrence. Counsel Assisting's questions included questions on the themes of culture, remuneration, engagement with ASIC, as well as questions in relation to the issue of vertical integration.

Vertical integration

A number of questions to Mr Hartzer centred around the issue of vertical integration and whether it is possible to avoid conflicts arising from a vertically integrated structure. Mr Hartzer expressed the view that 'the organisational structure itself does not create the conflict, nor does it protect against potential for conflicts'. Conflicts he said, arise both within and outside vertically integrated financial institutions, and therefore, it's a question of having appropriate measures in place to manage them.

Remuneration

- **Payment of variable remuneration**: Mr Hartzer said that he viewed it as both appropriate and consistent with all relevant stakeholders' interests, for some component of variable remuneration to be based on the employee's measurable contribution to the financial performance of the company. More specifically, he said that incentivising staff (through incentives) to contribute to the net growth of deposits, net growth of customers and net growth of share balances was also in the interests of shareholders. Asked whether incentives linked to the sale of products could also incentivise poor conduct, Mr Hartzer agreed that it was possible 'if it's structured badly' but added that incentives could, in his view, also 'drive good behaviour'.

- **Continued payment of flex commissions:** The Commission heard that though Westpac has acknowledged in the past, that the flex commission model of remuneration carries the risk that some dealers may prefer their own interests to the interests of consumers (creates a conflict of interest between dealers and consumers) and that therefore flex commissions were not in the best interests of customers, it has not abandoned flex commissions (though it has implemented caps). The Commission heard that the reason Westpac did not move away from the practice was because it was of the view that 'being the first mover' would not achieve industry wide change. Instead, Westpac's preferred approach 'was to make our view plain that it should stop, to be supportive of that, and to advocate with ASIC for it to stop. So it was not suggesting that we were prepared to endure it forever, it was that we thought a good way forward was to make the practice stop with an intervention from the regulator'.

- **Grandfathered commissions:** On the issue of the continued payment of grandfathered commissions until this year, Mr Hartzer said that Westpac had not acted to turn off grandfathered commissions earlier because 'there was an industry practice at the time [2013]. It was part of the transitional arrangements. And, as I said earlier, we expected the process to naturally flow off as – as advisers renewed their statements of advice with their clients.'

Culture

- **Engagement with the Australian Securities and Investments Commission (ASIC):** Mr Hartzer was asked a series of questions in relation to the approach Westpac has taken in the past to engaging with ASIC. He said that in the past 'insufficient weight' had been given to ASIC's views and that Westpac had not been sufficiently proactive in its engagement with the regulator (for example, in relation to the approach taken to credit increases). Asked to reflect on this particular example, and whether it was indicative of a cultural issue at the lender (at that time) Mr Hartzer did not agree that this was the case. He said: 'I think there was clearly a deficiency in understanding the seriousness with which regulatory disagreements needed to be dealt with. There needed to be clearer ownership within the first line business management for the fact that they were accountable for making sure they met their compliance requirements. And I think the combination of those things today would lead to a very different engagement with ASIC' and outlined a series of changes made to ensure that this was the case.
- **Measuring the effectiveness of changes implemented:** Mr Hartzer described a number of changes implemented to address issues with the way in which the lender dealt with ASIC historically as well as changes implemented to promote a strong compliance culture at the lender more generally. Asked why he thought the measures implemented would be effective, Mr Hartzer said 'on their own they're not sufficient, but I think that it's – it's a mechanism we've used to communicate much more directly with our people the importance of compliance, meeting the code of conduct, having an open relationship with regulators, logging issues when they arise, and the like'. Asked how the effectiveness of the measures would be assessed, Mr Hartzer said that they would be assessed through a 'number of lenses' including for example, staff surveys and whistleblower tools which would enable reporting and tracking of issues.
- **Opposition to some proposed reforms in the interim report:** Mr Hartzer was asked whether Westpac's opposition to potential reforms raised in the interim report was based on the effect they would have on the profitability of the bank's business. The reforms referred to are: Westpac's opposition to preventing authorised representatives from recommending a product manufactured or sold by the licensee; prohibiting remuneration of financial advisers based on value or volume of sales; requiring annual as opposed to biennial opt-in notices for ongoing fee arrangements; requiring the structural separation between product manufactures and advisers; opposing any duty being imposed on intermediaries beyond that proposed by the combined industry forum (in the context of consumer lending); banning trail commissions for intermediaries; banning introducer programs; and industry codes being given legal or further legal effect) is based on commercial considerations. Mr Hartzer said that though profitability is a 'component' it is not 'the main driver. Mr Hartzer added that 'The way you described that sounds like we're completely opposed to change which we're not, but each of those points has subtleties around them'.
- **Development of an 'ethical culture':** Asked more generally to explain how the 'right ethical culture within an organisation is developed', Mr Hartzer said that 'it starts with clarity of purpose of the company, and the way that the senior leaders talk about what they're trying to do, and then the way you embed that in what we think of as the hard wiring and soft wiring of the company'.

The role of APRA/engagement with APRA

- **Changes to APRA's role?** The Commissioner asked Mr Hartzer for his views on the role of APRA as a prudential regulator and more particularly whether a more 'formalised elaborate structure' would be preferable to the use of 'its existing supervision personnel and mechanisms as means and mechanisms of questioning, nudging, inquiring, suggesting, challenging'. Mr Hartzer said that the existing approach works well: 'I think we're pretty lucky with APRA. I think APRA is a very good regulator that serves the country well and performs its role very well. I think a bit more formality around the BEAR has been broadly helpful. I think it's important that it not devolve into a box ticking exercise which I'm sure we would all agree. But if you start with the premise – and it is my premise – that we set out to do the right thing, we set out to manage our company in a good way. We set out to have a strong balance sheet, we set out to deliver good outcomes for customers. Then an interactive relationship with the regulator where they do poke and prod and it is more back and forth and what do you think about this and we're worried about that, is really helpful and we find that incredibly valuable' he said.

- **Should approaches in other jurisdictions be emulated in Australia?** The Commissioner asked whether the approaches applied in other jurisdictions to prudential supervision, and more particularly the way in which regulators are 'starting to take a closer interest in matters of conduct, compliance, regulatory risk, and matters of that kind' should be implemented in Australia, Mr Hartzer said that though 'there's been a massive hit to trust for the – for the sector and it's really important that we restore that' it is also important to ensure that things do not 'go too far'.
- **How should APRA engage with the entities it regulates?** Asked whether APRA as a prudential regulator should be able 'in effect, unbidden to start challenging the board, the chair of the board, or should it be dealing only with the executive level of the bank? How do you see APRA intersecting with the entity itself? At what levels or level?' Mr Hartzer said that the regulator should interact with entities at 'all levels' and added that in his view this already occurs. 'The chairman of APRA and the senior APRA people come and meet with our board at least once a year. It might be twice. And there's a formal discussion part of which I participate in and then at some point I leave so they can have that conversation without any executives present. I think that's appropriate'. Mr Hartzer went on to say that day to day interactions should be at management level, 'I do think day-to-day the interactions should be with the management because in the – you know, I think there is a danger of asking board to become management. But I think it – clearly the board needs to get comfortable with its responsibilities for overseeing the risk appetite and the risk management framework, and in that they should absolutely have feedback and consultation with the regulators'.

Macquarie

The focus of questions to Macquarie Managing Director and CEO Nicholas Moore, was largely on two issues, the issue of the management of conflicts and the structure of remuneration at Macquarie. A brief overview of some of the issues to arise in relation to Macquarie's remuneration structure is below.

Remuneration

- **Variable remuneration:** The Commission heard that the way in which all Macquarie executives are paid is different to the way in which employees and executives within retail banks are paid. Macquarie executives have a relatively low fixed salary at a senior level and then receive a 'substantial profit share that's deferred over a number of years'. This variable component is in effect unlimited, because it is set each year as a percentage of profit share. The decision to award the variable component is based on consideration of four factors: financial performance, risk management and compliance, business leadership (including client outcomes) and risk management. The Commission heard that the process is one of 'intuitive synthesis' where there is a focus not only on financial performance but on other factors. This reflects, Mr Moore said the 'underlying performance of the business'. At CEO level, up to 80% of the CEO's salary is deterred for a period between 4 and 7 years, the aim being to ensure 'long term alignment in terms of the outcome for the shareholders and the clients and remuneration'.
- **What elements of the model employed at Macquarie might be applicable to other institutions?** The Commissioner queried what is 'generalisable' from the Macquarie remuneration model. 'Are there either principles or elements of the remuneration model that Macquarie adopts that you think yield more generalizable ideas?' he asked. Mr Moore identified three factors that could be applicable more generally:

    1. **Profit share as opposed to bonuses:** 'I think the idea of profit – a profit share is more powerful than bonus. Bonuses often relate to revenue rather than bottom line outcomes' he said.
    2. **Deferral: '**I think deferral – to see the outcome of decisions being made in finance, as we know, decisions being made today have consequences over many years. And so making sure there is that alignment over a period of time I think is – is very important.'
    3. **Use of non-financial metrics:** And the third element as we're talking about, it's not just being driven off a financial metric; it has a broader application to all the other elements that are critically important to the success of an organisation and to the success of clients'.

- **Use of non-financial metrics:** The Commissioner queries whether the need to 'synthesise a number of factors, some of which are incapable of reduction to numbers, yield decisions that are sometimes difficult to explain or difficult to have accepted by those to whom they're applied? Are there issues about – that emerge then in the management of the system with the staff understanding and those below understanding what's happening?'. Mr Moore said that though there will be 'natural pushback', that 'mostly' though the outcomes may be debated, they are generally accepted if there is clear communication. Mr Moore also linked the remuneration model used, and the use of profit share, as important for retention of staff and for building a sense of accountability within the business. That 'consciousness, we think, is the greatest safeguard we have in terms of the long-term health of the organisation and the client outcomes. And it's – we are constantly reinforcing in terms of staff training and staff review, that idea of accountability' he said.

- **Mortgage brokers and broker remuneration:** Asked to explain Macquarie's concern about changing the current commission structure for brokers, Mr Moore said that part of the concern was due to uncertainty about the form that regulation could take, 'our general point is one of caution to say there can be unintended consequences of regulation' he said. He added that Macquarie is dependent on the broker network for mortgage business and that 'having regard to history, that the broker network does provide genuine competition, and that genuine competition has reduced the cost for all mortgages. So our nervousness would be regulation could severely hamper that broker – broker business, and so we're providing a note of caution in terms of any thoughts about changing the regulatory structure that people think broadly about what the implications may be'. Asked for his views on the consequence if Macquarie was prohibited from being able to pay mortgage brokers any commission or in fact make any payment to brokers and brokers instead were paid a flat fee by the customer he said that it 'doesn't sound as attractive…as the current structure'.

[Sources: Royal Commission into Misconduct in the banking, superannuation and financial services industry (Financial Services Royal Commission): 19 November 2018 – Draft Transcript for Day 60; 20 November 2018 – Draft Transcript for Day 60; 21 November 2018 – Draft Transcript for Day 61; 22 November 2018 - Draft Transcript for Day 62]

Other Developments

Increased competition in the financial services sector? Assistant Treasurer Stuart Robert has welcomed the passage of legislation which will relax ownership restrictions on banks and insurers.

Assistant Treasurer Stuart Robert has issued a statement welcoming the passage *Treasury Laws Amendment (Financial Sector Regulation) Bill 2018*. The legislation will amend the *Financial Sector (Shareholdings) Act 1998* (FSSA Act) to (among other things) increase the ownership restriction applying to life insurance and general insurance companies, authorised deposit-taking institutions (ADIs) and relevant holding companies to 20%; and streamline the approval path for new entrants into the sector.

Mr Robert said that the changes 'significantly reduce barriers to entry that are preventing the innovation that our financial system needs, while still prioritising the safety of consumers and the broader financial system. New and recent entrants will now have the time that they need to test and grow their business before they need to consider diversifying ownership. This will be complemented by changes to *the Banking Act 1998* to support APRA's [the Australian Prudential Regulation Authority's] announced dual-phase licensing regime, together encouraging greater participation and competition in the financial system'. He added that they build on other government reforms to improve competition in the financial system.

[Sources: Assistant Treasurer Stuart Robert media release 19/11/2018; Treasury Laws Amendment (Financial Sector Regulation) Bill 2018; Explanatory Memorandum]

Update on preparations for the new education and professional standards regime for financial advisers: ASIC has reminded financial advisers of the need to register before 31 December, FASEA standards framework released and new draft legislative instruments released for consultation.

The Australian Securities and Investments Commission (ASIC) has issued a reminder to currently authorised financial advisers to ensure that they are on ASIC's Financial Advisers Register no later than 31 December 2018, to ensure that they are recognised as an 'existing provider' before new professional standards/education requirements take effect from 1 January 2019.

Context: Why existing advisers need to register

- From 1 January 2019, new financial advisers will have to meet new education and training requirements (completion of an approved qualification, passing an exam, completion of one year of supervised work and training) to be able to provide advice to clients.
- In order not to be considered a 'new entrant', financial advisers who were authorised at any time between 1 January 2016 and 1 January 2019, and who are not prohibited from providing advice on 1 January 2019, and who register with ASIC (on the Financial Advisers Register) before the deadline, will be recognised as an 'existing provider'.
- ASIC writes that registration on the Financial Advisers Register is the responsibility of the Australian financial services (AFS) licensees who authorise financial advisers. However, ASIC notes that authorised financial advisers can check whether they are registered by visiting the Financial Advisers Register and should speak to their AFS licensees to ensure they are registered before the deadline.

Financial Adviser Standards and Ethics Authority (FASEA) has released revised standards, and draft legislative instruments

The Financial Adviser Standards and Ethics Authority (FASEA) has released details of its revised standards framework for financial advisers and released draft legislative instruments ahead of ahead of the introduction of new education/professional standards requirements for advisers. The draft instruments are:

1. *Work and Training Requirement Legislative Instrument* (the deadline for submissions is 30 November)
2. *Provisional Relevant Provider Term Legislative Instrument* (the deadline for submissions is 30 November)
3. *Continuing Professional Development Legislative Instrument* (the deadline for submissions is 7 December)
4. *Code of Ethics* (the deadline for submissions is 19 December)
5. *Relevant Providers Degrees, Qualifications and Courses Standard Legislative Instrument* (the deadline for submissions is 14 December)

Revised standards released: FASEA writes that in response to industry feedback, a number of changes have been made to the standards. These include the following (among others).

- **Education pathways for new entrants:** FASEA will add a Post Graduate Career Changer pathway to enable new entrants to seek Recognition of Prior Learning (RPL) from their education provider.
- **Education pathways for existing advisers:** FASEA will further define recognition of prior learning (RPL) for Existing Advisers and provide guidance on credits for previous course work undertaken. The Advanced Diploma of Financial Planning (ADFP) will be eligible for 2 course credits. However, there will be no RPL available for the newly created Code of Ethics bridging course. In addition, FASEA said it will revise the Corporations Act unit to include other legal obligations such as Anti-Money Laundering, Privacy Act and Tax Practitioners Board requirements.
- **Recognition of foreign qualifications:** FASEA will recognise advisers who have had their assessments already assessed by Department of Education and Training (DET) approved bodies such as CAANZ and CPA. FASEA will undertake assessment for a fee of foreign qualifications to determine the relevant pathway to meet FASEA's education standard as part of FASEA's degree assessment service.
- **CPD hours reduced:** The number of CPD hours advisers are required to complete has been reduced from 50 to 40 hours each CPD year (including a maximum 4 hours of professional reading), of which 70% will need to be approved by the licensee.
- **Code of Ethics:** The 12 standards in the FASEA Code of Ethics have been revised to provide greater clarity of what is 'always expected of an adviser to act, in all cases, in a manner that is demonstrably consistent with the law' and case studies have been added to the Code of Ethics to provide additional guidance.

FASEA Chief Executive Stephen Glenfield said that 'the detailed consultation input was valuable to FASEA in creating standards which address industry and consumer needs while at the same time balancing FASEA's legislative obligations…Industry and consumer feedback has helped to create a balanced set of standards that, taken as a whole, offer a workable framework for how the industry will evolve into the future – for the benefit of both advisers and consumers.'

Industry response: The AFR reports that industry has expressed concern about the process, and more particularly around the perceived lack of transparency in finalising the standards and the tight timeframe for consultation given that the new regime is scheduled to commence in six weeks. 'With key detail still missing, the process is jeopardising any chance of a successful implementation. In what should've been a highlight for the sector, the process is setting it up for failure' a spokesperson for CPA Australia is quoted as stating. Reportedly, industry is also concerned that the new code of ethics will be enforced from January 2020 despite the fact that university courses on the new code are still in development.

[Sources: ASIC media release 23/11/2018; FASEA media release 16/11/2018; Provisional Relevant Provider Term Legislative Instrument; Work and Training Requirement Legislative Instrument; Relevant Providers Degrees, Qualifications and Courses Standard Legislative Instrument; Code of Ethics Legislative Instrument; Continuing Professional Development Legislative Instrument; [registration required The AFR 18/11/2018; Independent Financial Adviser 19/11/2018]

Review of unfair contract term protections for small business: consultation on the need for further reforms.

The government is undertaking a scheduled review of the extension to small business of the application of unfair contract terms (UCT) protections to small business as changes have now been in place for two years.

The government has released a discussion paper and is seeking feedback on the impact of the extension of UCT protections and whether the objective set for the original reforms has been met. It is also seeking views about whether any additional changes are needed to improve the framework.

Among the issues identified for discussion are:

- **Application of protections — are the current thresholds for defining a small business for the purpose of UCT protections adequate?** The current UCT protections apply to businesses that have fewer than 20 employees at the time of entering a contract where the value of the contract did not exceed $300,000 (or $1 million for contracts longer than 12 months). This effectively sets two thresholds for the application of UCT protections - the number of employees of the business and the monetary value of the contract. The discussion paper seeks feedback on:

  - Whether the headcount approach (how many employees are employed) is appropriate to define a small business for the purposes of UCT protections or whether an alternative approach would be better/why.

  - Whether the existing 'value' threshold is appropriate or whether it should be altered and why.

  The discussion paper also seeks feedback on whether respondents are aware of/have experience of contracting practices designed or undertaken to avoid the UCT protections.

- **Is greater clarity needed on whether a contract is covered by UCT protections?** The UCT protections are currently only applicable to standard form contracts, but the discussion paper observes that it may not always be apparent which contracts meet this requirement (and are therefore covered by UCT protections). The discussion paper seeks feedback on what factors/circumstances make it difficult to determine whether a contract is a standard form contract and what clarifications would assist in making this determination more easily.

- **Are current exemptions from UCT protections appropriate?** The discussion paper notes that when the protections were introduced certain exemptions were implemented and seeks feedback on whether these exemptions remain appropriate. The paper also asked whether there are examples whether the exemptions to the UCT protections have been ineffective and whether there is evidence to justify an expansion of the exemptions (e.g. as a result of regulatory overlap). In addition, the paper seeks feedback on whether industry 'minimum standards' prescribed by state/territory laws should be exempt from UCT protections.

- **Overall effectiveness of the reforms?** Feedback is also sought on whether the UCT regime offers an appropriate level of protection to small business, whether additional examples are required to clarify unfair contract terms.

Timeline: The deadline for submissions is 21 December 2018.

[Sources: Treasury media release 22/11/2018; Discussion Paper: Review of Unfair Contract Term Protections for Small Business; Assistant Treasurer Stuart Robert media release 22/11/2018]

Societe Generale has agreed to pay fines amounting to $1.34bn to US regulators to settle proceedings in relation to violations of US sanctions requirements

French bank Societe Generale SA (SocGen) has agreed to pay $1.34bn in fines as part of settlements with US federal and state authorities (the US Federal Reserve Board, Department of Justice (DOJ), the Department of Treasury's Office of Foreign Assets Control, the New York County District Attorney's Office, and the New York Department of Financial Services) to resolve investigations into 'violations' of US sanctions requirements and various New York state laws.

SocGen has also reportedly agreed to pay $95 million to settle another dispute over violations of anti-money laundering regulations.

Allegations: New York regulators allege that over an approximately 10 year period (2003 to 2013), SocGen executed billions of dollars in illegal transactions to parties in countries subject to embargoes or otherwise sanctioned by the United States, primarily in Cuba. Federal prosecutors allege the bank engaged in approximately 2500 transactions valued at approximately $13bn from 2004 to 2010 in violation of US sanctions laws. SocGen reportedly attempted to conceal these transactions by making inaccurate or incomplete notations on payment messages.

Settlement: Under the settlement, SocGen has agreed to:

- 'accept responsibility for its conduct by stipulating to the accuracy of an extensive Statement of Facts',
- pay penalties totaling $1,340,165,000 to federal and state prosecutors and regulators,
- refrain from all future criminal conduct;
- implement various remedial measures as required by US regulators.

Assuming SG’s continued compliance with the Agreement, the US government has agreed to defer prosecution for a period of three years, after which time it will seek to dismiss the charges.

SocGen CEO Frederic Oudea said: 'We acknowledge and regret the shortcomings that were identified in these settlements, and have cooperated with the US Authorities to resolve these matters…These resolutions, following on the heels of the resolution of other investigations earlier this year, allow the Bank to close a chapter on our most important historical disputes'.

[Sources: Societe Generale media release 19/11/2018; Federal Reserve Board media release 20/11/2018; NY Department of Financial Services media release 19/11/2018; Manhattan US Attorney Department of Justice media release 19/11/2018; [registration required] The FT 20/11/2018; Bloomberg 20/11/2018; CNBC 20/11/2018; [registration required] The WSJ 19/11/2018; FCPA blog 20/11/2018]

Accounting and Audit

United Kingdom | The BEIS Committee has announced it will undertake a 'Future of audit inquiry' following publication of the CMA and Kingman Review reports with the aim of ensuring the recommendations are acted on swiftly.

At a keynote speech at Institute of Chartered Accountants in England and Wales (ICAEW) Rachel Reeves MP, Chair of the UK Business, Energy and Industrial Strategy (BEIS) Committee, launched a new inquiry into the 'future of audit' in the UK. Ms Reeves explained that the inquiry is being launched to ensure the outcomes of the Competition and Markets Authority (CMA) and Kingman reviews into the audit sector are implemented: 'The current inquiries by the CMA and Sir John Kingman are welcome and necessary. But, too often in the past corporate and regulatory failures have been followed by reviews which have been left to gather dust rather than result in concrete action. Our Committee's inquiry on the future of audit seeks to ensure these reviews are acted upon swiftly and effectively and that they genuinely deliver the improvements to audit quality and corporate governance which businesses, investors, pension-holders and the public expectations' she said.

[Note: On 17 April, the UK government announced the launch of an independent 'root and branch' review of the Financial Reporting Council (FRC) the regulator for auditors, accountants and actuaries to be conducted by Sir John Kingman (the Kingman Review). The review is to be completed by the end of 2018. See: Governance News 20/04/2018. Separately, The Competition and Markets Authority (CMA) is also conducting a detailed market study into the audit sector to examine 'concerns that it is not working well for the economy or investors'. The is due to consult on provisional views by the end of 2018 and to 'complete its work as soon as possible thereafter'. See: Governance News 15/10/2018.]

Scope of the inquiry:

- The inquiry will focus on the likely impact of the Competition and Markets Authority (CMA) market study and the review of the FRC (by Sir John Kingman) in improving quality and competition in the audit market and reducing conflicts of interest.
- BEIS writes that it intends that the inquiry will 'feed into the CMA study and ensure audit reform is linked to coherent reform of the wider corporate governance agenda'.
- The Committee inquiry is likely to call witnesses from the Big Four and 'challenger' accountancy firms, Audit Committee chairs, CFOs from FTSE350 companies, institutional investors, as well as representatives from the FRC and the ICAEW, outside experts and Sir John Kingman.

BEIS has invited feedback on the following issues.

- The relationship between competition and quality in the audit market and whether reforms in one area 'complement' the other.
- The extent to which respondents agree with the CMA proposals (when published). Whether the proposals are likely to increase quality and trust in audits and whether there are any potential unintended consequences.
- The extent to which respondents agree with the Kingman proposals regarding the FRC (when published).
- The extent to which conflicts of interest undermine trust in audit and how these can be removed/mitigated.
- Views on the relationship between the auditor and the audited company and the impact that that relationship has on audit quality and more particularly, how best to ensure the right level of challenge, and the role shareholders should play in ensuring high quality audits.
- Views are also sought on whether proposed reforms of audit are consistent with other recent reforms of corporate governance and whether consequential reform is required.

Timeline: The deadline for submissions is 11 January 2019. The Committee intends to begin evidence hearings in January, as soon as possible after the Kingman and initial CMA reports are published.

[Sources: BEIS media release 12/11/2018; submission deadline; Speech by Rachel Reeves: Audit, Trust and the Future of Capitalism 12/11/2018]

United Kingdom | The FRC has announced a review of the 2016 changes to ethical and auditing standards to determine whether further measures are required to strengthen auditor independence, reduce conflicts, improve quality of audit and preserve trust in independent audit.

The UK Financial Reporting Council (FRC) is seeking feedback on the effectiveness of changes to ethical and auditing standards, introduced in 2016 to implement new UK legislation addressing the requirements of the EU's Audit Regulation and Directive.

More particularly, The FRC seeks feedback on how effective the 2016 changes have been in delivering high quality audit and whether further steps are required to strengthen auditor independence, reduce conflicts, improve audit quality and 'preserve trust in independent audit'.

Mike Suffield, Executive Director for Audit at the FRC, said that the review is aimed at addressing 'potential weaknesses' and at ensuring that 'audit better meets the expectations of those who rely on it.'

Timeline: The deadline for submissions is 15 February 2018. The feedback will be used to supplement 'lessons learned' from the FRC's own audit inspection and enforcement work, the FRC writes.

[Source: FRC media release 20/11/2018]

Alleged breach of ICAEW Code of Ethics: The UK FRC has announced that a formal complaint has been brought against KPMG and one of its partners in relation to alleged breaches of the ICAEW Code of ethics

The Financial Reporting Council (FRC) has announced that the FRC Executive Counsel has delivered a disciplinary Formal Complaint under the Accountancy Scheme, against KPMG LLP and one of its partners, David Costley-Wood, a member firm and member respectively of the Institute of Chartered Accountants in England and Wales (ICAEW).

The alleged Misconduct relates to an engagement carried out by David Costley-Wood between January 2011 and April 2011 relating to companies trading under the name Silentnight. It's alleged that:

- Contrary to the Fundamental Principle of Objectivity in the ICAEW Code of Ethics (Code), KPMG and Mr Costley-Wood accepted and performed an engagement for Silentnight in circumstances where their professional judgment was compromised (or was likely to be compromised) and their objectivity was impaired (or was likely to be impaired).
- In breach of the Fundamental Principle of Integrity in the Code, KPMG and Mr Costley-Wood knowingly or recklessly assisted with the provision of untrue and/or misleading and/or materially incomplete explanations to the Pension Protection Fund (PPF), the Pensions Regulator, Silentnight and the trustees of the Silentnight Pension Scheme in relation to Silentnight.

The FTC writes that a Disciplinary Tribunal will be convened (the date will be announced 'in due course') to hear the Formal Complaint and determine whether there was misconduct.

[Source: FRC media release 22/11/2018]

Risk Management

Supply Chain Risk

The government has released draft guidelines on a proposed new government procurement policy aimed at increasing integrity in government procurement processes

Following the 2018-19 Budget announcement to increase the integrity of the Commonwealth procurement process in response to a recommendation made by the Black Economy Taskforce (see: Governance News 14/05/2018), the Government is seeking comments from interested parties on a draft procurement connected policy (PCP).

Treasury writes that once finalised, the PCP will require businesses seeking to tender for Australian Government procurement contracts over $4 million (inclusive of GST) to provide a statement of tax record from the Australian Taxation Office that indicates that they are generally compliant with their tax obligations. The draft PCP sets out the key components intended to improve the integrity of the procurement process and provides guidance intended to assist all relevant commonwealth entities in implementing the policy.

Treasury writes that the draft PCP was informed by an initial consultation process from 15 May to 15 June 2018.

In a statement, Assistant Treasurer Stuart Robert said: 'The Government is leading by example and supporting businesses doing the right thing through the supply chain…The requirement to have a satisfactory tax record was recommended in the Black Economy Taskforce final report, and aims to disrupt suppliers that are able to make more competitive bids at the procurement point because they have saved costs by not complying with their tax and superannuation obligations'.

Application: It's proposed that compliance with the PCP be mandatory to all non-corporate Commonwealth entities. Corporate Commonwealth entities and Commonwealth companies 'are encouraged to adopt this policy'.

Commencement: The proposed commencement date is 1 July 2019 and will apply to new approaches to market on or after 1 July 2019, for procurements valued over $4 million (including GST) for all goods and/or services, including for construction services. The policy does not require Commonwealth entities to amend existing contracts or deeds of standing offer that are in place prior to this policy's commencement date.

Timeline for consultation: The deadline for submission on the draft PCP is 21 December 2018.

[Sources Assistant Treasurer Stuart Robert media release 20/11/2018; Treasury media release 20/11/2018; Draft Procurement connected policy guidelines; Treasury certification; Treasury certification]

Sourcing products 'ethically' makes 'good financial sense'? The AFR reports that Rio Tinto has said that securing ethically sourced materials will pay off for companies (like Nespresso) as consumers push for greater transparency and assurance about where products come from and how they are produced.

The AFR reports that Rio Tinto's head of aluminium Alf Barrios has said that companies that embrace new standards for ethical sourcing and manufacturing will be rewarded with premium prices as customers seek greater transparency and assurance around the supply chain behind the products they purchase.

The statements were reportedly made in the context of a deal between Nespresso and Rio Tinto in which the companies agreed to work together to ensure 100% of the aluminium used in Nespresso coffee pods is 'sustainable' and 'responsibly sourced'. The aluminium used will be certified as being made without breaching ESG standards (e.g. indigenous rights, water management, carbon emissions) by a not-for-profit industry group called the Aluminium Stewardship Initiative (ASI).

Mr Barrios is quoted as stating: 'We believe that as more volume is sold that is ASI-certified this has potential to drive demand as well as premiums across the industry…There is a growing market for transparency and assurance in the supply chain of raw materials and this certification demonstrates our commitment to good social and environmental practice….It does have a commercial aspect to it, it is good commercial sense to do this, it does benefit the industry's reputation and ensures a sustainable future for the industry, it increases the consumer awareness of sustainable sourcing and creates market differentiation for our products.'

The AFR comments that not all Rio Tinto assets currently have ASI certification, though the company has said that it hopes that they will achieve this in time, which limits the sites from which Nespresso will be able to source 'sustainable aluminium'.

[Sources: [registration required] The AFR 19/11/2018; [registration required] The FT 19/11/2018]

In Brief | Debate on the Federal Modern Slavery Bill: *Modern Slavery Bill 2018* is due to resume in the senate on Tuesday 27 November

[Sources: Work of The Senate 26-29 November; Modern Slavery Bill 2018]

Whistleblowing

Griffith University research adds further weight to the need for urgent action to better protect whistleblowers: 81.6% of those who reported cases of unethical behaviour in their workplaces faced repercussions for speaking up.

As part of a broader research process, Griffith University researchers have released a working paper: *Whistling While They Work 2: Improving managerial responses to whistleblowing in public and private* *organisations* summarising the findings of research into perceptions of the value of whistleblowing in organisations and the treatment of whistleblowers.

More specifically, research aimed to answer two questions:

- The extent to which whistleblowing is recognised as important to organisations, and to society, as a means of identifying and rectifying wrongdoing and achieving positive changes and reforms; and
- Whether the treatment and outcomes experienced by whistleblowers is commensurate with the social and organisational value placed on whistleblowing.

Some Key Findings

- **Agreement that whistleblowers perform a valuable function:** The researchers found that there appears to be broad consensus in both the private and public sectors that reporting suspected wrongdoing is vital to the ongoing success of organisations. For example: in 58.2% of cases, fundamental reforms to processes (egg managerial changes, new training) were implemented following whistleblower complaints.
- **Majority of whistleblowers face negative repercussions:** Based on the experiences of 17,778 individuals across 46 organisations in Australia and New Zealand, the researchers found that 81.6% of those who reported cases of unethical behaviour in their workplaces faced repercussions for speaking up. Employee reporters said they were treated badly by their management or colleagues (principally management) in 42.1% of cases. Manager and governance professionals reported a slightly lower figure, 34.1%.
- **Outcomes appear worse for employees than for managers or governance staff who report wrongdoing**: Comparison between responses from managers and governance staff and reporters confirms a pattern in which outcomes are worse for employee reporters than for managers or governance staff who report wrongdoing.
- **Time for proactive action by organisations?** The findings 'point to the critical importance, and potential advantages, of organisations adapting processes to better fulfil their duty to support and protect whistleblowers from adverse impacts before they happen, rather than waiting for negative outcomes to occur' the report concludes.

Findings lend weight to the need for action on the issue: Commenting on the findings, the Governance Institute of Australia (GIA) writes that the findings confirm the findings of the Governance Institute Ethics Index 2018 (which identified whistleblower protection as one of the top ranking ethical issues) and lends weight to the need for organisations to more effective manage whistleblowing internally to reduce repercussions for whistleblowers.

The Governance Institute also noted that the findings have been released in the context of recent comments by the government of plans to push forward with whistleblower legislation *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* as well as plans for the creation of a whistleblower protection authority as part of a new federal anti-corruption body, or national integrity commission.

[Note: Debate on the federal Whistleblower Bill: *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* is scheduled to resume in the senate on Thursday 29 November.]

[Sources: Griffith University media release 15/11/2018; Key Results Summary; Whistleblowing: New rules, new policies, new vision. Working Papers; Governance Institute media release 16/11/2018]

In Brief | The FT reports that Lloyds Banking Group has apologised and paid compensation to a whistleblower whose 2013 internal report which documented and criticised the way in which HBOS executives had concealed a fraud in a specific branch before the bank was taken over by Lloyds during the financial crisis.

[Source: [registration required] The FT 14/11/2018]

Cybersecurity

United States | Human error/loss of physical data (not hacking) is the key cause of data breaches in the health care sector according to an HHS study

Reuters reports that a US Department of Health and Human Services (HHS) study has found that human error/deliberate theft (of hardcopy records/equipment) by employees, far outpaced hacking as the source of data breaches in the health care sector between October 2009 and the end of 2017.

More particularly, the primary causes of data breaches were identified as:

- theft of equipment or (hardcopy) information by unknown outsiders or by current or former employees (42% of incidents)
- poor communication practices/employee errors e.g. mailing or emailing records to the wrong person, sending unencrypted data (even when employees had access to encryption tools), taking records home or forwarding data to personal accounts or devices (25% of incidents).

[Source: Reuters 20/11/2018]

In Brief | The FT reports that Apple CEO Tim Cook has said that new regulations for the technology industry to protect user privacy are 'inevitable' in the wake of a series of scandals. 'Generally speaking, I am not a big fan of regulation…I'm a big believer in the free market. But we have to admit when the free market is not working. And it hasn't worked here. I think it's inevitable that there will be some level of regulation . . . I think Congress and the administration at some point will pass something' he is quoted as stating.

[Source: [registration required] The FT 19/11/2018]

Other Developments

Nissan Chair Carlos Ghosn is reportedly facing criminal investigation and will be stripped of his chairmanship following allegations of criminal misconduct.

Nissan Motor Co Ltd (Nissan) has issued a statement announcing that, following the completion of an internal investigation (triggered by a whistleblower report) into the conduct of Director and Chair Carlos Ghosn and Director Greg Kelly, which found 'clear violations of the duty of care as directors' the company will move to remove them from their respective positions at the company.

More particularly, Nissan states that the internal investigation into both men found that:

- 'over many years' both men had underreported Mr Ghosn's compensation to the Tokyo Stock Exchange
- Mr Ghosn was involved in 'numerous other significant acts of misconduct' including personal use of company assets in which Mr Kelly also had 'deep involvement'.

In terms of removing the two men from their positions, Nissan said that CEO Hiroto Saikawa would propose to the Nissan Board of Directors the prompt removal of Mr Ghosn from his positions as Chairman and Representative Director of the company and also the removal of Mr Kelly from his position as representative director.

The company states that it has been providing information to the Japanese Public Prosecutors Office and has been fully cooperating with their investigation. The statement adds that the company 'deeply apologizes for causing great concern to our shareholders and stakeholders. We will continue our work to identify our governance and compliance issues, and to take appropriate measures'.

According to media reports, Mr Ghosn has since been arrested and is facing criminal investigation into the alleged misconduct.

Media reports

Media reports have speculated that the developments at Nissan could have negative implications for both Renault (where Mr Ghosn is Chair and CEO) and Mitsubishi (where Mr Ghosn is Chair). The FT reports that Mr Ghosn had been planning a merger (to formalise and make 'irreversible' the partnership) between Renault and Nissan (Nissan owns 15% if Renault and Renault owns 43% of Nissan), prior to his arrest, which was opposed by the Nissan board.

The AFR reports that Renault's board has taken no action against Mr Ghosn but has appointed Thierry Bollore to act as interim deputy CEO with the same powers as Mr Ghosn (following reports of his arrest in Japan).

The Nikkei Asian Review suggests that the allegations against Mr Ghosn may signify a broader corporate governance issues at the firm, noting that Nissan is one of the few companies not to adhere to Japan's Corporate Governance Code which calls for at least two outside directors (among other accountability/governance measures). Other reports have also suggested that Mr Ghosn's longstanding positions heading major companies simultaneously lead to him accruing too much influence/power and should not have been allowed to continue, or should not have been allowed to continue for as long as it did.

[Sources: Nissan media release 19/11/2018; Reuters 20/11/2018; [registration required] The FT 20/11/2018; ABC news 19/11/2018; ABC 20/11/2018; [registration required] The Australian 20/11/2018; [registration required] The WSJ 19/11/2018; BBC 20/11/2018; CNBC 20/11/2018; The Guardian 20/11/2018; Nikkei Asian Review 21/11/2018; [registration required] The AFR 21/11/2018; [registration required] The FT 21/11/2018]

Stronger enforcement approach in relation to black economy offences: The government has released a consultation paper seeking feedback on proposals to implement Black Economy Taskforce recommendations announced in the 2018-2019 Federal Budget.

In line with the Black Economy Taskforce recommendations, the government is consulting on the design of a 'modern offences regime' to more efficiently target black economy activities. The consultation paper outlines a number of proposed amendments to strengthen existing offences and penalties as well as proposals intended to streamline the prosecution process. Proposals include (among others): the introduction of enhanced record keeping requirements as regards gambling winnings and gifts; the review of penalties for sham contracting; strengthening administrative penalties; reversing the onus of proof for some elements of black economy offences; enabling greater access data (to aid in the investigation and enforcement of black economy offences) and expanding the jurisdiction of the Federal Court.

Timeline: The deadline for submissions is 21 December 2018

[Sources: Assistant Treasurer Stuart Robert media release 22/11/2018; Treasury media release 22/11/2018; Consultation paper: Improving black economy enforcement and other offences 22/11/2018]

Restructuring and Insolvency

In Brief | Why do small/medium businesses fail? Lack of leadership and management, and lack of planning and execution were identified by 25% of CEOs of small/medium businesses as the key reasons for business failure, 14% identified poor financial management and 13% identified failure to anticipate the impact of external factors/failure to mitigate risks.

[Note: ASIC's latest annual report on corporate insolvencies 2017-2018 found that small to medium size corporate insolvencies 'dominate external administrators' reports'. ASIC reports that the top 3 nominated causes of business failure were: Inadequate cash flow or high case use (49% of reports), poor strategic management of the business (46% of reports) and trading losses (39%). See: Governance News 19/11/2018]

[Source: University of South Australia: Australian Centre for Business Growth media release 20/11/2018]

In Brief | The *UK Insolvency (Amendment) (EU Exit) Regulations 2018* were laid in draft form before UK Parliament on 19 November (they are yet to be approved by either House). They are made under section 8(1) of the *European Union (Withdrawal) Act 2018* and make amendments to legislation in the field of cross-border insolvency in consequence of the UK's withdrawal from the European Union.

[Sources: Draft legislation: The Insolvency (Amendment) (EU Exit) Regulations 2018 explanatory note; The Insolvency (Amendment) (EU Exit) Regulations 2018; Progress of the draft legislation]