Governance News

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Diversity

Top Story | ASX 200 reaches 30% women directors

The Australian Council of Superannuation Investors (ACSI) has announced that female board representation on ASX 200 boards has reached the 30% target but emphasises that it considers that 'gender representation on company boards is a long way from equal'.

Target Achieved

The Australian Council of Superannuation Investors (ACSI) has announced that female board representation on ASX 200 boards has reached the 30% target.

ACSI notes that in some cases, the target has been exceeded with women accounting for 40% of directorships at 40 ASX200 companies and 50% or more at a 20 companies.

ACSI CEO Louise Davidson said that the benefits of board diversity are well established adding that the 'milestone represents the culmination of years of work by ACSI and others to increase the number of women appointed to listed company boards…To have corporate Australia achieve and, in many cases, now exceed this target is a good outcome.'

The job isn't complete? Despite the achievement of the 30% target, ACSI emphasises that it considers that 'gender representation on company boards is a long way from equal'. For example:

- Overall, 70% of board positions are held by men including 90% of chair roles
- Over 50% of the ASX 200 is yet to reach the 30% target
- Five ASX200 companies have no women directors and 46 companies have only one
- More than 25% of ASX200–300 companies have zero women boards

'While we are pleased to see the 30% milestone achieved, it's important that we maintain the momentum for change' Ms Davidson said.

ACSI will continue to advocate for gender parity on boards

Referencing its recent policy proposal which called for listed companies to set a 'reasonable' timeframe for achieving gender balanced boards (ie a 40% men, 40% women and 20% of either gender:40:20) and advocated regulatory intervention should this not occur by 2025, ACSI said that it will continue to advocate for increased board diversity (see: Governance News 08/05/2019.)

'Until then, we will apply our voting policy to recommend our members vote against the election of directors on boards with poor gender diversity' ACSI states.

To this end, ACSI recently wrote to the boards of ASX300 companies with poor gender diversity and is currently undertaking a series of meetings with their directors to discuss this issue.

[Sources: ACSI media release 13/06/2019]

First business in Australia 'certified' on equal pay: Philip Morris achieves an Australian first in closing gender pay gap

Key Takeout: Philip Morris Australia is the first organisation in Australia to receive equal salary certification by the Switzerland-based Equal-Salary Foundation, in recognition of its push to close the gender pay gap.

According to a media release issued by the firm, Philip Morris Australia is the first organisation in Australia to achieve equal-salary certification by the independent Equal Salary Foundation. The achievement follows the same organisation awarding Philip Morris International global equal salary certification in March.

Independent analysis from the equal salary foundation revealed a 0.9% difference between what female Philip Morris Australia employees are paid compared with their male colleagues. By comparison, Australian government statistics show that there is an average 14.1% between full-time male and female workers around the country.

Philip Morris Australia's Managing Director Tammy Chan commented that 'This certification is public recognition for something we've been proud of for many years – equal pay for equal work' and added that the firm is committed to closing the gender gap in management.

On track to meet 2022 gender target: Internationally, Phillip Morris aims for women to account for 40% of management roles by 2022. According to the statement, the firm is on track to meet this target with 35% of management roles currently held by women.

In Australia, 44% of Philip Morris' workforce is female including a female Managing Director, female Senior Legal Counsel and female Director of People and Culture.

[Source: Media release: Equal work, equal pay: Philip Morris achieves Australian-first in closing gender pay gap 13/06/2019; Sources: MyBusiness 13/06/2019]

A Boston Consulting Group report has found that most diversity and inclusion policies in large Australian companies are failing to deliver the expected benefits to target groups

Report Overview | Boston Consulting Group, When Good Intentions aren't enough: getting tangible outcomes from your diversity and inclusion efforts

Boston Consulting Group has released a report presenting the findings of its research into the effectiveness of diversity and inclusion (D&I) programs in Australian companies.

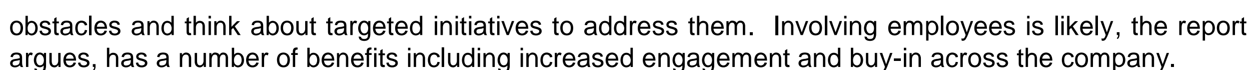
Three Key Findings

1. **Most large Australian companies have D&I programs in place but most employees do not feel like they are benefitting from them:** According to the report, only 11% of female employees feel they have benefited from their company's D&I programs, and only 14% of ethnically diverse employees and 18% of LGBTQ+ employees feel they have benefited from workplace D&I programs.
2. **Most employees have limited interaction with D&I programs and often do not understand the goals of the programs:** According to the report, only 32% of employees reported direct exposure to their company's D&I programs, and of these, only 59% said that they understand the goals of these programs.
3. **The report found a diversity of viewpoints about D&I within organisations:** The report found that people's own views on D&I are driven by their own experience and that they struggle recognise obstacles that they haven't personally faced. For example, heterosexual cisgender employees were least likely to recognise the obstacle faced by LGBTIQ+ colleagues.

Suggested way forward? How to design employee-centric programs

The report argues that putting employees at the centre of D&I program design and delivery, is central to improving program effectiveness and outlines four steps to design an 'employee-centric' program. The report also features 'case studies' from leading companies on the way in which they have approached the issue.

1. **Understand the context**: The report suggests organisations should start by running 'diagnostic exercises' (ie collecting qualitative and quantitative data to understand the needs of their employees and the value of existing D&I programs) to establish a 'D&I baseline'. The report observes that in many cases, this will mean that companies need to collect and analyse new data and that identifying, collecting and analysing the right data requires time, resources and financial commitment.
2. **Re-imagine the existing D&I program:** The report suggests that companies should then ask a broad and diverse group of employees what their vision for their company is from a D&I perspective. For example, employees might be asked to reimagine specific processes such as recruitment to identify



obstacles and think about targeted initiatives to address them. Involving employees is likely, the report argues, has a number of benefits including increased engagement and buy-in across the company.

3. **Test, learn and iterate:** Once a D&I program has been designed, the report suggests it should be tested before full-scale implementation and adjusted where needed, before being rolled out to the wider organisation. Programs should then not be 'left on a shelf' but regularly assessed, reviewed and improved.

4. **Track progress and share it widely:** Communicating progress and results drives awareness of D&I programs and generates broader support for D&I goals. The cycle of tracking and communicating progress also promotes regular engagement and keeps D&I in the company's collective consciousness.

Change in mindset: 'For most large companies, changing the status quo and achieving better outcomes requires a shift in mindset towards their employees. Matching this with a tighter approach to execution and a commitment to tracking and reporting, will turn good intentions into desired D&I outcomes' the report states.

About the Report: The report is based on a survey of nearly 1,600 people in Australia who work for companies with over 1,000 employees, as a part of a global survey of 16,500 employees. The global report, *Fixing the Flawed Approach to Diversity* was released in early 2019 (see: Governance News 23 January 2019).

For the Australian study, respondents were asked questions about discrimination, obstacles, and the prevalence and effectiveness of D&I initiatives. The analysis was then tested in interviews with senior executives, senior HR professionals and D&I program coordinators at eight large Australian companies, five D&I peak bodies and with expert D&I consultants.

[Source: Boston Consulting Group report: When Good Intentions aren't enough: getting tangible outcomes from your diversity and inclusion efforts June 2019; Business Insider 17/06/2019]

Scotland | For the first time, more than 50% of all board members appointed to oversee public bodies in Scotland are women

The BBC reports that for the first time, more than 50% of all board members appointed to oversee public bodies in Scotland — ie health boards, enterprise agencies, the Scottish Police Authority, Scottish Fire and Rescue Service, colleges and universities — are women.

Some Key Points

- Of 680 regulated ministerial appointments made to public boards, 341 were women (up from 45% in 2016).
- This encompasses 89 boards and women now make up half or more of the membership on 57 of them.
- The legislature set a 50% target for female representation among non-executive board members by 2022 though the *Gender Representation on Public Boards (Scotland) Act 2018*.

Legislation has been an effective driver 'Motivation to change'

Equalities Minister Christina McKelvie reportedly said more action would be taken to work towards all public boards having 50% women appointed and to improve the representation of women holding Chair positions. She reportedly added that setting a target within the legislation had assisted in driving progress on the issue: 'legislation just gave it that additional driver for other public boards to take that step forward and push a bit further…It's a wonderful way to motivate other boards to change. It sends a message out to women in Scotland to say you are welcome on these boards, we want you on these boards, there's an opportunity for you to come on these boards and many women have stepped up and taken this opportunity'.

Consultation on draft guidance on the operation of the legislation and arrangement for reporting on progress: The Scottish government has launched a consultation on the regulations and guidance for the *Gender Representation on Public Boards (Scotland) Act 2018* and in particular, on the arrangements for reporting progress as the timing, frequency and content, are not specified in the Act. The deadline for submissions is 4 August.

[Sources: BBC 15/06/2019; Consultation: Gender Representation on Public Boards (Scotland) Act 2018]

United Kingdom | Good progress on improving gender diversity, but less progress on ethnic diversity? The FT reports that the Bank of England Governor has said the bank is on track to meet its 2020 gender diversity target

Bank of England [BoE] Governor Mark Carney has said that the bank is on track to hit its 2020 target for women to fill 35% of senior roles after a 'deliberate, concentrated effort throughout the organisation'. Mr Carney said that the proportion of senior positions filled by women had risen from 17% in 2013 — when he joined the BoE — to 32% this year, which he described as 'considerably above' the 14% industry average. Mr Carney added that the pipeline of future leaders also looks healthy with women accounting for 46% of staff below senior management.

Changes to HR procedures (eg flexible working arrangements, shift in recruitment methods) and training programs within the BoE are credited with driving the improvement.

Progress on improving ethnic diversity? The FT reports that with respect to improving ethnic diversity at senior levels, the bank has been less successful and reportedly is falling short of reaching its target. Mr Carney reportedly said that improvements on this front will take longer than anticipated.

[Sources: Speech by Governor of the Bank of England, Mark Carney at the Women in Banking and Finance 22nd Annual Awards: Finance by all, for all 14/06/2019; [registration required] The FT 14/06/2019]

Glass Lewis reports that 'in the absence of government action' investors are taking the lead on pushing for increased gender diversity in Brazilian boardrooms

Glass Lewis reports that a Brazilian chapter of the 30% Club, has been established in Brazil, 'in the absence of government action' with the aim of improving gender diversity on boards. Reportedly, the following 'aspirational targets' have been set:

- zero all male boards on B3's Novo Mercado listing segment by 2020; and
- 30% women on boards of B3's IBrX100 listed companies by 2025

Glass Lewis comments that the expansion to Brazil reflects increasing investor concern about the lack of board diversity. For example, in February relevant national and international funds such as Hermes, Robeco, Petros, Previ, Leblon equities, and BlackRock wrote to the IBrX100 companies, to express their concern with the composition of Brazilian boards and committees and their support for initiatives aimed at improving diversity (not only gender diversity, but diversity in terms of skills/experience). The Canada Pension Plan has also reportedly issued a statement confirming that they will start voting against nomination committee chairs of companies with all male boards.

[Source: Glass Lewis blog 12/06/2019]

OECD 2019 Corporate Governance Factbook released: For the first time the FactBook includes comparative data about the gender composition of boards

The Office of Economic Cooperation and Development (OECD) has released the 2019 edition of its Corporate Governance Factbook. It contains comparative data and information across 49 different jurisdictions including all G20, OECD and Financial Stability Board members.

The Facebook covers five areas:

1. **the corporate and market landscape:** an overview of ownership patterns around the world, with respect to both the categories of owners and the degree of concentration of ownership in individual listed companies
2. **the corporate governance framework:** monitors who serves as the lead regulatory institution for corporate governance of listed companies in each jurisdiction, as well as issues related to their independence
3. **the rights of shareholders and key ownership functions:** provides detailed information related to rights to obtain information on shareholder meetings, to request meetings and to place items on the agenda, and voting rights as well as coverage of frameworks for review of related party transactions,

triggers and mechanisms related to corporate takeover bids, and the roles and responsibilities of institutional investors.

4. **corporate boards of directors:** The structure and composition of boards across jurisdictions including board structure and independence; board level committees; board nomination and election; board and key executive remuneration; and for the first time in this report gender composition on boards and in senior management.

5. **mechanisms for flexibility and proportionality in corporate governance**: The extent to which policy makers in different jurisdictions have put in place a regulatory framework flexible enough to meet the needs of corporations operating in different circumstances, facilitating their development of new opportunities and the most efficient deployment of resources.

The Factbook was last updated in 2017.

Some Observations

Themes to emerge: Substantial change especially in the areas of risk management and remuneration policy over the past few years

According to the Facebook, there has been substantial change in global markets and national regulatory frameworks over the past few years. For example, 84% (49) of the surveyed jurisdictions amending their company law or securities regulations or both since 2015 and nearly half of all jurisdictions have revised their national corporate governance codes in the past two years. Regulatory frameworks for risk management and remuneration policy have been areas of particular focus. An increasing number of jurisdictions are also establishing policies to promote balanced and diverse company boards, either through disclosure, voluntary gender targets or quotas.

Executive/board remuneration

Besides measures to improve firm governance via promoting an independent board-level committee, 92% of jurisdictions have introduced general criteria on the structure of remuneration, with a majority doing so through the 'comply or explain' system.

Only two jurisdictions, India and Saudi Arabia, have set maximum limits on remuneration.

Say on pay and disclosure of remuneration

A majority of jurisdictions have a requirement or recommendation for a binding or advisory shareholder vote on remuneration policy. Binding votes on remuneration amounts have also 'become common' (39%), with another 22% of jurisdictions requiring advisory votes.

According to the report, regulations with respect to say on pay and disclosure of remuneration tend not to target the setting of remuneration but rather aim to give shareholders an opportunity to assess the cost of the remuneration package and the extent to which it is aligned with the longer term interests of the company. For this purpose, the report observes that jurisdictions increasingly provide shareholders with an opportunity to exercise either binding or advisory votes on executive pay. These may include voting only on the remuneration policy (its overall objectives and structure) or may be extended to include the amount/level of remuneration.

Gender Diversity

The 2019 Factbook provides data for the first time on measures to promote gender balance on corporate boards and in senior management, most often via disclosure requirements and measures such as mandated quotas and/or voluntary targets.

According to the report:

- 49% of surveyed jurisdictions (49%) have established requirements to disclose gender composition of boards, and 22% have requirements disclose the gender composition of senior management
- nine jurisdictions have mandatory quotas requiring a certain percentage of board seats to be filled by either gender

- eight jurisdictions have in place more flexible mechanisms such as voluntary goals or targets; and three use a combination of both
- the proportion of senior management positions held by women is reported to be significantly higher than the proportion of board seats held by women

Generally, jurisdictions with quotas in place have a higher proportion of women on boards: The Facebook states that though it does not 'seek to analyse the impact of legislated quotas or targets on the actual board composition', a review of average gender composition in the surveyed jurisdictions shows jurisdictions with no quotas or targets in place for gender diversity (35% of total surveyed jurisdictions) report, on average, having fewer women on boards (13.8%) than those that have established mandatory requirements for private sector companies (28.1%), or voluntary targets (18.6%).

[Source: OECD 2019 edition: Corporate Governance Factbook]

Remuneration

United Kingdom | UK shareholders have the information and the power they need to hold companies to account without the need for further reform? The UK government will not take any specific actions in response to a BEIS executive remuneration report, until the impact of recent reforms already in place is known

On 26 March 2019, the Business, Energy and Industrial Strategy Committee (BEIS) published its report into executive pay: *Executive rewards: paying for success (HC 2018)*. The government responded to each of the 16 recommendations in the report on 3 June. Overall, the government's position appears to be that it will take no specific actions in response to the recommendations on the basis that reforms already in place will address the concerns raised. However, the government response welcomes the recommendations as contributing 'to the continuing public debate on high levels of executive reward'.

Key Points

- **Shareholders have the information and power to hold companies to account on executive pay:** The government's position is that, taken together, recent reforms (eg the introduction of a pay ratio reporting requirement for public companies; measures requirement remuneration committees to engage with the wider workforce to explain how executive pay fits with wider employee pay in the revised Corporate Governance Code and the establishment of a public register of companies that encounter 'significant' shareholder opposition to their executive pay/how they are responding) give 'shareholders the information and the powers with which to hold companies to account on executive pay'.
- **Commitment to monitor the impact of reforms:** The government's immediate priority is to focus on the 'effective implementation and then assessment of the most recent reforms before considering significant further changes'. The statement adds that the government will monitor the impact of the reforms and 'would consider further action at a future point unless there is clear evidence that companies are taking active and effective steps to respond to significant shareholder concerns about executive pay outcomes'.

[Sources: Executive rewards: paying for success: Government Response to the Committee's Eighteenth Report of Session 2017–19]

United Kingdom | Increased pay gap disclosure in the UK is leading to increased scrutiny, and to (slow) progress in addressing the issue?

Bloomberg reports that according to HSBC UK's latest gender pay gap report, the pay gap has narrowed since 2018:

- HSBC UK reported a gender pay gap of about 55% (as compared with 61% last year)
- women received bonuses almost 70% lower than those of their male peers (as compared with 85% lower in 2018)

Reportedly CEO John Flint said that creating the 'healthiest human system' is one of the priorities of his tenure and that the bank has 'more work to do' in addressing the issue.

Bloomberg comments that HSBC is the first bank to report its figures for 2019, and as such an in-year comparison is possible until others publish their gender pay reports, (which they are not required to do until April 2020).

Pay transparency has led to increased focus on the issue: Bloomberg suggests that increased transparency through reporting has led to increased focus on the issue, particularly on the gap in the financial services sector, as the differences between what men and women earn becomes public. Reportedly a parliamentary hearing was recently held with representatives of the industry, including HSBC, to discuss progress on improving conditions for women in the finance sector.

[Source: Bloomberg 13/06/2019]

Institutional Shareholders and Stewardship

In Brief | The Office of New York State Comptroller's climate action plan includes among other things, a commitment to 'formally integrate climate risk assessment and engagement into investment processes to evaluate companies in high impact sectors on climate transition readiness'

[Note: In Australia, as part of a broader policy response to the Financial Services Royal Commission, the Australian Council of Superannuation (ACSI) Investors has recently put forward policy proposals aimed at strengthening investment stewardship and mandating integration of environmental, social and governance (ESG) considerations into investment decision making. See: Governance News 08/05/2019]

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 16/06/2019]

In Brief | The biggest question that miners face is around ESG? The AFR reports that BlackRock's chief investment officer, Evy Hambro has identified satisfying investors' ESG demands will be the chief challenge for big miner over the next decade

[Source: [registration required] The AFR 17/06/2019]

Other Shareholder News

S&P Dow Jones is reportedly removing Facebook (Wells Fargo, Oracle and IBM) from its S&P ESG Index

Business Insider reports that S&P Dow Jones Indices has removed Facebook, Wells Fargo, Oracle and IBM from its S&P 500 ESG Index.

According to the report, the decision to remove Facebook was based on privacy concerns, including a 'lack of transparency' which meant Facebook no longer met the index provider's environmental, social and governance (ESG) standards. Reportedly, at the time of Facebook's removal, it scored a 21 out of 100 according to S&P DJI's ESG rating overall. More particularly, while its environmental score was 82, its social and governance scores had fallen to 22 and 6, respectively. 'The specific issues resulting in these scores had to do with various privacy concerns, including a lack of transparency as to why Facebook collects and shares certain user information' Reid Steadman, S&P's global head of ESG, is quoted as stating.

S&P DJI reportedly went on to say that the ESG Index is rebalanced annually and as such, if Facebook addressed the governance/privacy issues identified, it could again be added. 'As Facebook's peers raise the bar in their ESG performance…Facebook will need to do even more to re-join the ranks of the S&P 500 ESG Index' Mr Steadman is quoted as saying.

The article suggests that the move underscores not only the pressure on Facebook 'amid a string of privacy scandals', but the rise of firms incorporating ESG metrics into their investment decisions.

[Source: Business Insider 14/06/2019]

Disclosure and Reporting

Key Takeouts

1. **New accounting standards will have the greatest impact** for many companies since the adoption of International Financial Reporting Standards (IFRS) in 2005, ASIC states.
2. **More extensive disclosure required:** 'It is important that directors and management ensure that companies inform investors and other financial report users of the impact [of the new accounting standards] on reported results. Required disclosure on the effect of the new standards is more extensive than that made by many companies for the 31 December 2018 half-year'.
3. **ASIC commissioner John Price said the regulator will be reviewing more than 200 full-year financial reports** at 30 June 2019 to promote quality financial reporting and useful and meaningful information for investors.

The Australian Securities and Investments Commission (ASIC) has outlined its focus areas for 30 June 2019 financial reports. The regulator has called on companies to focus on new requirements that can materially affect reported assets, liabilities and profits. In particular, ASIC highlights that new accounting standards 'will have the greatest impact' for many companies.

New accounting standards

The new accounting standards will have the greatest impact for many companies since the adoption of International Financial Reporting Standards (IFRS) in 2005, ASIC states.

The new standards include the following.

- AASB 9 Financial Instruments (applies from years commencing 1 January 2018)
- AASB 15 Revenue from Contracts with Customers (applies from years commencing 1 January 2018)
- AASB 16 Leases (applies from years commencing 1 January 2019)
- AASB 17 Insurance Contracts (applies from years commencing 1 January 2021): ASIC notes that The International Accounting Standards Board (IASB) has proposed to defer the application date for the standard on which AASB 17 is based to years commencing 1 January 2022
- Amendments to standards to apply the new definition and recognition criteria in the Conceptual Framework for Financial Reporting (applies from years commencing 1 January 2020)

New lease accounting and other requirements

With respect to the new lease accounting standard, ASIC says that directors and auditors should ensure that notes to 30 June 2019 financial statements disclose the impact on future financial position and results of new requirements for accounting for leases, accounting for insurance businesses, and new definition and recognition criteria for assets, liabilities, income and expenses. ASIC adds that it considers that is 'reasonable for the market to expect that companies will be able to quantify the impact of the new standards, particularly for the lease standard'.

ASIC also highlights that 'a new conceptual framework that contains new definition and recognition criteria for assets, liabilities, income and expenses in the framework will apply for years commencing 1 January 2020 where the criteria are not inconsistent with a specific requirement of an accounting standard. Companies will need to make note disclosure at 30 June 2019 of the future impact of the criteria in the new framework'.

Impact of the new standards? ASIC Commissioner John Price said that, the 'new accounting standards can significantly affect results reported to the market by companies, require changes to systems and processes, and affect businesses.'

In particular, the new accounting standards may significantly affect how and when revenue can be recognised, the values of financial instruments (including loan provisioning and hedge accounting), reported

assets and liabilities relating to leases, accounting by insurance companies, and the general identification and recognition of assets, liabilities, income and expenses.

More extensive disclosure: ASIC considers public disclosure on the impact of the standards and timely implementation is important for investors and market confidence and adds that information that there will be no material impact may also be important for the market.

'It is important that directors and management ensure that companies inform investors and other financial report users of the impact [of the new accounting standards] on reported results. Required disclosure on the effect of the new standards is more extensive than that made by many companies for the 31 December 2018 half-year' ASIC states.

ASIC review: ASIC states that required disclosure on the effect of the new standards is more extensive than that made by many companies for the 31 December 2018 half year and adds that the regulator will be reviewing more than 200 full year financial reports at 30 June 2019 'to promote quality financial reporting, and useful and meaningful information for investors'.

Other Areas of Focus

Role of directors and management in ensuring the quality of reports: Referencing both ASIC Information Sheet 183 Directors and financial reporting and ASIC Information Sheet 203 Impairment of non-financial assets: Materials for directors ASIC emphasises that 'directors are primarily responsible' for the quality of the financial report including ensuring that quality financial information is provided 'on a timely basis'.

ASIC adds that companies are required to have appropriate processes, records and analysis to support information in their reports rather than 'simply relying on the independent auditor'. Companies are also expected, ASIC writes, to apply the appropriate expertise and experience particularly in more difficult and complex areas such as accounting estimates (including impairment of non-financial assets), accounting policies (such as revenue recognition) and taxation.

Further detail

ASIC draws attention to a number of specific issues in relation to the following areas: accounting estimates, accounting policy choices (revenue recognition and expense deferral, off balance sheet arrangements and tax accounting. Among other things, ASIC flags the following.

Impairment testing and asset values: ASIC identifies the recoverability of the carrying amounts of assets such as goodwill, other intangibles and property, plant and equipment an 'important area of focus'. Other areas of focus on asset values include: companies affected by climate change, market changes, digital disruption, technological change or Brexit; and the valuation of financial instruments, particularly where values are not based on quoted prices or observable market data. Fair values should be based on appropriate models, assumptions and inputs.

Revenue recognition: ASIC notes that the new revenue standard is considerably more detailed than the previous standard and focuses on performance obligations. ASIC states that directors and auditors should review an entity's revenue recognition policies to ensure that revenue is recognised in accordance with the substance of the underlying transactions when applying the new revenue recognition accounting standard.

Key Disclosures

Operating and financial review (OFR): Referencing ASIC Regulatory Guide 247 Effective disclosure in an operating and financial review, ASIC reminds companies that listed entities should disclose information that may have a material impact on the future position/performance of the entity and cites a number of examples of the sort of information this may include: Brexit, cybersecurity; new technology or climate.

ASIC also suggests that directors could consider 'whether it would be worthwhile to disclose additional information that would be relevant under integrated reporting, sustainability reporting or the recommendations of the Task Force on Climate-related Financial Disclosures where that information is not already required for the Operating and Financial Review'.

Non IFRS financial information: Referencing Regulatory Guide RG 230 Disclosing non-IFRS financial information ASIC states that directors should consider whether any non-IFRS financial information in the OFR or other documents outside the financial report is 'potentially misleading'.

Estimates and accounting policy judgements: ASIC states that disclosures regarding sources of estimation uncertainty and significant judgements in applying accounting policies are important to allow users of the financial report to assess the reported financial position and performance of an entity and that as such 'directors and auditors should ensure disclosures are made and are specific to the assets, liabilities, income and expenses of the entity'. In addition, the regulator states that key assumptions and sensitivity analysis are important as they enable users of the financial report to 'make their own assessments about the carrying values of the entity's assets and risk of impairment given the estimation uncertainty associated with many asset valuations'.

[Source: ASIC media release 7/06/2019]

Related News: Struggling to meet new AASB 16 requirement?

A survey by Lease Accelerator of over 60 senior finance professionals has found that almost one-third of companies are behind schedule or have not started projects to meet the July 1 deadline. Almost 85% of respondents said the project had turned out to be more complex than they anticipated and 61% are finding the project more complex than the new revenue recognition standard AASB 15.

[Sources: Lease Accelerator media release 18/06/2019; Accountants Daily 18/06/2019]

Regulators

ASIC has reportedly hired an organisational psychologist to assist with its targeted reviews of corporate governance practices

The AFR reports the Australian Securities and Investments Commission (ASIC) has hired an organisational psychologist, Elizabeth Arzadon from Kiel Advisory Group, to assist with its targeted reviews of corporate governance practices in large listed entities.

The review is being carried out by the regulator's corporate governance taskforce and is focused on reviewing governance processes and practices in relation to oversight of non-financial risk.

Details?

- Reportedly Ms Arzadon has been asked by the regulator to prepare a report highlighting good and bad boardroom practices in relation to the oversight of risk based on her observations of board meetings (which she is reportedly sitting in on).
- Referencing a speech by Commissioner John Price in September of last year, The AFR suggests that Ms Arzadon will assist ASIC in addressing specific issues in relation to oversight of non-financial risk.

[Note: The speech references appears to be ASIC Commissioner John Price's speech to the Risk Management Association Annual Chief Risk Officer Conference in September 2018, in which he identified a number of questions the taskforce would consider with respect to the way in which directors/officers oversee non-financial risk. See: Governance News 10/09/2018]

- Reportedly, Ms Arzadon's report will be aggregated into ASIC's report, and all case studies will be anonymised.
- Ms Arzadon is reportedly required, under the terms of her contract with the regulator to keep everything related to the work confidential.
- The AFR quotes an ASIC spokesman as stating that participation is completely voluntary, though some directors have reportedly questioned whether this is so in practice.

Mixed views? Reportedly, non-executive directors are divided over ASIC's use of an organisational psychologist. Some directors have reportedly raised concerns 'at the most senior level of government in Canberra' about ASIC's use of a psychologist in boardrooms.

Could use of a psychologist by the regular become permanent? The AFR comments that the Dutch central bank, De Nederlandsche Bank, has made organisation psychology an important part of its regulatory toolkit since 2010. The AFR speculates that ASIC may elect to follow this example.

[Source: [registration required] The AFR 19/06/2019]

First case concerning the alleged breach of conflicted remuneration provisions: ASIC has commenced civil penalty proceedings in the Federal Court against SMSF advisers

Key Points

- The Australian Securities and Investments Commission (ASIC) has commenced civil penalty proceedings in the Federal Court against RM Capital Pty Ltd (RM Capital) and its authorised representative, The SMSF Club Pty Ltd (SMSF Club) in relation to accepting more than $730,000 in (allegedly) conflicted remuneration.
- ASIC will contend that SMSF Club and RM Capital contravened the conflicted remuneration provisions of the *Corporations Act 2001 (Cth)* on 259 occasions each. Each contravention attracts a potential civil penalty of up to $1 million.
- This will be the first case concerning the alleged breach of conflicted remuneration provisions.

The Australian Securities and Investments Commission (ASIC) issued a statement announcing that it has commenced civil penalty proceedings in the Federal Court against R M Capital Pty Ltd (RM Capital) and its authorised representative, The SMSF Club Pty Ltd (SMSF Club), in relation to accepting $730,000 in (allegedly) conflicted remuneration.

ASIC alleges that:

- SMSF Club advised its clients to set up self managed superannuation funds (SMSFs), then use their SMSFs to buy real property marketed by a real estate agent, Positive RealEstate Pty Ltd (Positive RealEstate).
- SMSF Club had referral agreements with Positive RealEstate and that RM Capital was aware of this referral agreement.
- From December 2013 to July 2016, each time an SMSF Club client used their SMSF to buy a property marketed by Positive RealEstate, Positive RealEstate paid around $5,000 to SMSF Club (either directly or through RM Capital who passed the majority of the payment to SMSF Club).
- ASIC's contends the payments could reasonably be expected to have influenced financial product advice given by SMSF Club to its clients, and so constituted banned conflicted remuneration under the Corporations Act.
- SMSF Club accepted more than $730,000 in conflicted remuneration from Positive RealEstate.

ASIC also alleges that RM Capital (as the authorising licensee for SMSF club) was aware of the payments but by failing to take reasonable steps to stop the SMSF Club from accepting them, breached the law.

ASIC is seeking declarations of contravention, civil penalties and compliance orders against both RM Capital and SMSF Club.

[Source: ASIC media release 12/06/2019]

AUSTRAC has ordered Afterpay to appoint an external auditor to review its AML/CTF compliance

The Australian Transaction Reports and Analysis Centre (AUSTRAC) has issued a statement announcing that following a period of ongoing engagement with Afterpay Pty Ltd (Afterpay) which identified concerns with Aferpay's compliance with the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (the AML/CTF Act), AUSTRAC has ordered the appointment of an external auditor to examine its compliance with the AML/CTF Act. The audit will be used to determine the extent of any compliance issues and whether further regulatory action concerning Afterpay is required.

Further details: AUSTRAC states that the external auditor will examine Aferpay's:

- governance and oversight of decisions related to its AML/CTF framework
- identification and verification of customers
- suspicious matter reporting obligations
- AML/CTF program, including the development of its money laundering and terrorism financing risk assessment

The audit will be conducted at Afterpay's expense. AUSTRAC states that a preliminary audit report must be provided to AUSTRAC within 60 days.

AUSTRAC CEO, Nicole Rose PSM said that 'AUSTRAC will continue to work with Afterpay to assist the company to mature and strengthen its compliance processes, staff training and suspicious matter reporting…But we will not hesitate to take action where an organisation is failing to appropriately protect itself and Australia's financial system from criminal activity.'

The AFR comments that depending on the result of the audit, Afterpay could face civil penalty action, fines, remedial directions and enforceable undertakings.

Caution to the buy-now-pay-later sector: Commenting more generally, Ms Rose said that the buy-now pay-later sector had experienced rapid growth in recent years and that the appointment of an auditor to check on Afterpay would remind new financial services businesses of their AML obligations. 'These laws are in place to protect businesses, the financial system and the Australian community from criminal threats' Ms Rose said.

Afterpay's response

In a statement to the ASX Afterpay said: 'We welcome this opportunity to continue to work closely and constructively with AUSTRAC and we will approach this formal process as an opportunity to ensure that our AML/CTF compliance is robust. We are committed to remaining focused on becoming better at what we do.'

The statement adds that Afterpay has undertaken 'various measures to strengthen' its AML/CTF framework including in the focus areas identified by AUSTRAC and is continuing to invest in further compliance enhancements.

The AFR comments that 'potential issues' with Afterpay's AML/CTF compliance emerged in April last year when Ownership Matters alleged that minors were able to use the serve to buy alcohol. The Australian reports that there has been a 6% drop in the Afterpay share price since the AUSTRAC announcement.

[Sources: AUSTRAC media release 13/06/2019; Afterpay Pty Ltd ASX announcement [registration required] The AFR 13/06/2019; [registration required] The Australian 15/06/2019; 18/06/2019]

United States | CFTC member Rostin Beham has reportedly given an interview cautioning that climate change poses a major financial risk: 'It's abundantly clear that climate change poses financial risk to the stability of the financial system' he is quoted as saying

The New York Times reports that Rostin Behnam (who is a member of the Commodity Futures Trading Commission (CFTC)) has given an interview in which he said that the financial risks from climate change are comparable to those posed by the sub-prime mortgage crisis (which triggered the 2008 financial crisis). Mr Behnam is quoted as saying: 'if climate change causes more volatile frequent and extreme weather events, you're going to have a scenario where these large providers of financial products — mortgages, home insurance, pensions — cannot shift risk away from their portfolios…It's abundantly clear that climate change poses financial risk to the stability of the financial system.'

Reportedly, Mr Behnam has said he will soon release details for the establishment of a panel of experts at the CFTC who will produce a report on how global warming could impact the financial sector (for example: impacting food costs, insurance markets, the mortgage industry and other economic pillars).

At odds with the administration? The article notes, that though other US regulators including the Securities and Exchange Commission (SEC) have previously flagged the potential financial risks associated

with climate change, this is conflict with the Trump Administration's approach (ie the administration has made it a priority, to roll back climate change policies).

[Source: New York Times 11/06/2019]

Financial Services

Time to prioritise NPP services: The Reserve Bank of Australia has called on the major banks to prioritise the roll out and development of NPP services

Report Overview | **NPP Functionality and Access Consultation: Conclusions Paper**

The Reserve Bank of Australia (RBA) has released a paper presenting the results of a public consultation on the functionality of, and access to, the New Payments Platform (NPP).

The report's overall conclusion is that:

1. The NPP is enabling payments functionality that largely addresses the gaps identified in the Reserve Bank's 2010–2012 Strategic Review of Innovation
2. The 'slow and uneven roll-out of NPP services by the major banks has been disappointing' and this has likely slowed the development of new functionality and contributed to stakeholder concerns about access to the NPP.
3. Stakeholders identified a range of barriers to entry for new participants. For example, the requirement that new participants were authorised deposit-taking institutions registered with the Australian Prudential Regulation Authority (APRA) and must make a material capital contribution to the scheme.

Recommendations

The report includes 13 recommendation, which if fully implemented by NPP Australia (NPPA) and its participants, are intended to: 1) promote the timely roll-out of NPP services and development of new functionality and 2) address barriers to participation. Recommendations include the following.

Incentivising the timely roll-out of services and the development of new functionality

- **NPP participants should prioritise the roll-out of NPP services to their entire customer base** and address any functionality gaps that currently exist in their customer offerings.
- **New sanctions regime:** By end December 2019, NPPA should introduce a power for its Board to mandate that specified NPP core capabilities must be supported by NPP participants within a specific period of time with an enforceable sanctions regime (including possible financial penalties) to apply if participants do not comply.
- **'Roadmap' of new functionality:** From September 2019, NPPA should periodically publish a roadmap of the additional NPP functionality it has agreed to develop and the expected time period over which it will be delivered. This roadmap should be updated at least semi-annually.
- **Assessing new 'overlay services':** By end September 2019, NPPA should publish its process for assessing potential overlay services, including how confidential information on the plans of potential overlay service providers will be controlled and the respective roles and responsibilities of the NPPA management, independent directors and the broader NPPA Board in approving overlay services.

Changes to entry requirements: addressing barriers to access

- **Open to non-ADIs by March 2020:** NPPA should by end October 2019, submit to the RBA and the ACCC an assessment of options for revised participation requirements for non-ADI participants. By the end of March 2020, NPPA should implement any revised participation requirements for non-ADI participants.
- **By the end of December 2019 the NPPA should introduce:**

- 'more gradation into the shareholding requirement by creating at least one additional lower band so that subscription requirements can be more closely tied to an entity's size or expected contribution to NPP transaction volumes
- establish an access route for direct participation that is based either on acquiring shares in instalments or on periodic subscription or membership fees, rather than the upfront purchase of shares
- consider allowing NPP participant applicants that did not exist when the NPPA was being developed to subscribe to a lower amount of shares than usual

NPPA governance: introduction of an application review mechanism and new reporting requirements

- **Introduction of a review mechanism (to review unsuccessful applications):** By end December 2019, NPPA should review its arrangements for applications for access as a participant, connected institution or overlay service provider. This should include enabling unsuccessful applicants to seek a review of the decision to reject their applications by a review/evaluation which would have 'binding power' to: a) overturn an earlier denial of an application; and b) the power to ask NPPA to review the access criteria if it believes the criteria impose unreasonable conditions.
- **Annual reporting requirement on applications to RBA:** At least once a year, NPPA should publish a report of the number of applications for access that it received during the preceding year, the outcomes of those applications, and a summary of the key reasons in cases where applications were ultimately not supported by the NPPA Board. The first report should cover the financial year ending June 2019.
- **New notification requirement:** NPPA should notify the Reserve Bank's Payments Policy Department within one week whenever an application for access to the NPP (as a participant or connected institution) is not supported by NPPA's Board.
- **NPPA should appoint a third independent director** by end September 2019.

Fee transparency: NPP Transaction fees

- From its first pricing review after July 2019, NPPA should publish data on its wholesale transaction pricing.
- Prior to the introduction of full cost-recovery pricing, NPPA should publish the wholesale transaction fee that would be implied by full cost-recovery pricing.
- Following the introduction of full cost-recovery pricing, NPPA should publish its wholesale transaction fee and the methodology it has used to determine that fee.

Next steps

Further review: With the assistance of the ACCC the RBA will conduct another review commencing no later than July 2021, or earlier if the RBA 'becomes aware of significant issues or concerns regarding NPP access or functionality'.

Regulation? If the RBA assesses that there has been insufficient progress in addressing the recommendations made in the report, it will 'closely consider the case for regulation via standards mandating functionality or an access regime imposed on the NPP and its participants'.

[Sources: Reserve Bank of Australia media release 13/06/2019; RBA Report: NPP Functionality and Access Consultation: Conclusions Paper; [registration required] The AFR 13/06/2019]

Open Banking update | Treasury has released the second version of a draft Designation Instrument for the application of the Consumer Data Right for consultation until 12 July

Treasury has released the second version of a draft designation instrument for the application of the consumer data right (CDR) to the banking sector (Open Banking) for consultation. The first stage of consultation on the draft Open Banking Designation Instrument was held from 23 September 2018 to 12 October 2018.

Treasury states that the second stage of consultation responds to concerns raised in the first stage of consultation with respect to the scope of information to be included.

In response to these concerns, 'materially enhanced' data (ie data which is the result of 'the application of insight, analysis or transformation of data to significantly enhance its useability and value by comparison to its source material') will be 'carved out' by the 'materially enhanced test'. Data holders may not be required to disclose materially enhanced data under the CDR, but nonetheless may be authorised to disclose it through the CDR if they so wish.

Treasury states that the data sets which are currently in the draft rules and standards do not meet the test of having been 'materially enhanced'.

Feedback sought: The Designation Instrument includes an example list of banking data sets that are not materially enhanced, and the explanatory statement includes an example list of data sets that are materially enhanced. Treasury states that it is specifically seeking examples to add to each of these lists and has asked that submissions specify any additions that stakeholders would like to see included.

Timeline: Submissions are due by 12 July 2019. Treasury states that responses will inform Regulation Impact Statement and Privacy Impact Assessment processes.

Ready by February? The AFR reports that Treasury has told the major banks that it expects them to be ready to share customer data with third parties under the government's open banking regime by February, despite the fact that the primary legislation has not yet been passed.

[Note: The primary legislation, *Treasury Laws Amendment (Consumer Data Right) Bill 2019* was introduced into the House of Representatives on 13 February, but lapsed when the federal election was called on 11 April.]

[Sources: Treasury media release 14/06/2019; Summary of proposals; Designation Instrument for Open Banking (second stage); Explanatory Statement; Designation Instrument for Open Banking (second stage); [registration required] The AFR 13/06/2019]

Increased scrutiny of the 'bank of mum and dad'? The AFR reports that in response to the new Banking Code of Practice lenders are tightening lending controls

The AFR reports that National Australia Bank (NAB), Commonwealth Bank of Australia, ANZ and Westpac Group (which includes Bank of Melbourne, BankSA and St George Bank), are introducing tighter lending controls in response to the new Banking Code of Practice that will apply from 1 July 2019.

[Note: The Australian Securities and Investments Commission approved the Australian Banking Association's (ABA's) new Banking Code of Practice (the Code) on 31 July. It is a condition of ABA membership that member banks with a retail presence in Australia are required to sign up to the revised Code. The revised Code applies to all consumers and to small businesses borrowing up to $3m and replaces the previous version, The Code of Banking Practice 2013. The Code will commence operation from 1 July 2019. See: Governance News 06/08/2018]

Reportedly under NAB's new controls, loan guarantors will face additional scrutiny of their suitability. They will reportedly be asked to provide additional information to demonstrate they understand the potential impact on their finances and awareness of their responsibilities. For example, evidence will be required that guarantors obtained legal advice, or reviewed the documentation setting out terms and conditions.

In addition, NAB is introducing additional protections for co-borrowers. Where co-borrowers are not receiving a substantial benefit from the loan proceeds there must be evidence they understand the risks.

According to The AFR, the other lenders are planning to introduce similar measures.

[Sources: [registration required] The AFR 17/06/2019; NAB update for brokers]

Related News: Increased protection for 'vulnerable customers'?

The AFR reports that from 1 July, the Bank of Queensland (BoQ) will introduce a new requirement for mortgage brokers to sign a declaration that they are aware of risks to vulnerable customers and confirm that there are no signs of financial or physical abuse by the proposed borrower, or related parties.

Reportedly, BoQ has provided 'explicit directions' about how brokers are to deal with vulnerable customers, and has written to brokers encouraging them to 'familiarise themselves with signs of vulnerability' and to highlight in notes used for the loan assessment, any concerns they have.

The changes are reportedly intended to prevent unconscionable behaviour involving borrowers using pressure or deception to enlist the support of family members to support joint applications and are being introduced under the banking code of practice reforms being rolled out by the banks to tighten prudential controls, particularly for third parties involved in mortgages.

According to The AFR, brokers have raised concerns about the new requirement, including that they lack the training to meet the requirement.

[Source: [registration required] The AFR 18/06/2019]

APRA has responded to the first phase of consultation on proposed changes to the ADI capital framework: APRA maintains that the proposed changes will neither impact competition in the mortgage market nor adversely impact access to credit

Context: The Australian Prudential Regulation Authority (APRA) is consulting on revisions to the capital framework for authorised deposit-taking institutions (ADIs) to implement the Financial System Inquiry's 'unquestionably strong' capital ratios and the Basel III reforms. An initial package of proposals was released for consultation in February 2018.

APRA received 18 industry submissions to the initial proposed revisions and has now released a response paper as well as three draft prudential standards — APS 112 Capital Adequacy Standardised Approach to Credit Risk, APS 113 Capital Adequacy Internal Ratings-based Approach to Credit Risk (residential mortgages extract only) and APS 115 Capital Adequacy Standardised Measurement Approach to Operational Risk — for further consultation.

The deadline for submissions is 6 September 2019.

Revisions to the initial proposals

After taking into account both industry feedback and the findings of a quantitative impact study, APRA has revised some of its initial proposals. Changes include:

- **for residential mortgages,** some narrowing in the capital difference that applies to lower risk owner-occupied, principal-and-interest mortgages and all other mortgages
- **more granular risk weight buckets and the recognition of additional types of collateral for SME lending**, as recommended by the Productivity Commission in its report on Competition in the Financial System
- **lower risk weights for credit cards and personal loans** secured by vehicles

APRA chair Wayne Byres commented that 'in setting out these latest proposals, APRA has sought to balance its primary objectives of implementing the Basel III reforms and "unquestionably strong" capital ratios with a range of important secondary objectives. These objectives include targeting the structural concentration in residential mortgages in the Australian banking system and ensuring an appropriate competitive outcome between different approaches to measuring capital adequacy.'

Mr Byres added that the proposed changes are not expected to either impact competition in the mortgage market or impact access to credit for borrowers. He also said that banks that already met the 'unquestionably strong' capital targets should not need to raise additional capital to meet the measures. 'It is also important to note that the proposals announced today will not require ADIs to hold any capital additional beyond the targets already announced in relation to the unquestionably strong benchmarks, nor do we expect to see any material impact on the availability of credit for borrowers' Mr Byres said.

Separate consultation on other measures: APRA states that other measures proposed in the February 2018 Discussion Paper, as well as improvements to the transparency, comparability and flexibility of the ADI capital framework, will be consulted on in a subsequent response paper due to be released in the second half of 2019.

Implementation timeline: The regulator states that the consultation on the revisions to the ADI capital framework is a multi-year project and it expects to conduct one further round of consultation on the draft prudential standards for credit risk prior to their finalisation.

It is intended that the changes will come into effect from 1 January 2022, in line with the Basel Committee on Banking Supervision's internationally agreed implementation date. An exception is the operational risk capital proposals for ADIs that currently use advanced models: APRA is proposing these new requirements be implemented from the earlier date of 1 January 2021.

Impact of proposed changes to the capital adequacy framework in New Zealand for Australian lenders? Noting queries raised by stakeholders on this issue, APRA says that at this stage, the revised proposals 'do not make any change to the Level 1 risk weight for ADIs equity investments in subsidiary ADIs'.

APRA adds that it has been 'actively engaging with the Reserve Bank of New Zealand on this issue, and any change to the current approach will be consulted on as part of APRA's review of Prudential Standard APS 111 Capital Adequacy: Measurement of Capital later this year'.

[Source: APRA media release 12/06/2019; Response to Submissions - Revisions to the Capital Framework for ADIs; [DRAFT] Prudential Standard APS 112 Capital Adequacy: Standardised Approach to Credit Risk; [DRAFT] Prudential Standard APS 113 Capital Adequacy: Internal Ratings Based Approach to Credit Risk; [DRAFT] Prudential Standard APS 115 Capital Adequacy: Standardised Measurement Approach to Operational Risk]

'Penalising' lenders for higher risk lending (eg interest only loans/loans to property investors): The AFR interprets the proposals as 'penalising' banks for higher risk lending and suggests that they will make some mortgages more expensive. As such, The AFR suggests as a 'win for the big banks'.

[Sources: [registration required] The AFR 12/06/2019; 12/06/2019; Mortgage business 13/06/2019]

Leadership changes at ANZ announced

In a statement, ANZ has announced the appointment of Antonia Watson as Acting CEO of ANZ New Zealand and the departure of David Hisco.

Mr Hisco's departure is attributed to 'ongoing health issues' as well as 'board concern about the characterisation of certain transactions following an internal review of personal expenses.'

ANZ states that Mr Hisco 'does not accept all of the concerns raised by the board' but 'accepts accountability given his leadership position and agrees the characterisation of the expenses falls short of the standards required'.

The statement quotes ANZ New Zealand Chair John Key as expressing disappointment at Mr Hisco's departure under the circumstances but makes clear that he considers it to be appropriate 'given the expectations we have of all our people, no matter how senior or junior'.

The statement goes on to state that Mr Hisco 'will receive his contracted and statutory entitlements to notice and untaken leave, with all unvested equity to forfeit'. According to The AFR Mr Hisco's unvested equity is worth about $6.4 million.

The AFR comments on the 'usual' transparency of the statement from ANZ with respect to the reasons for Mr Hisco's departure, suggesting that it, and Mr Hisco's departure, signal a cultural shift.

[Sources: ANZ media release 17/06/2019; [registration required] The AFR 17/06/2019]

APRA has imposed directions and conditions on AMP Super RSE licensees

The Australian Prudential Regulation Authority (APRA) has issued directions and additional licence conditions to AMP Superannuation Limited and NM Superannuation Proprietary Limited (collectively AMP Super). APRA says that the action arises from issues identified during APRA's ongoing prudential supervision of AMP Super, along with matters that emerged during the Financial Services Royal Commission.

APRA states that the directions and additional licence conditions were imposed to 'address a range of concerns' with respect to AMP Super's compliance with the *Superannuation Industry (Supervision) Act 1993* (SIS Act) and will require AMP Super to make 'significant changes' to business practices.

APRA identified: 'conflicts of interest management, governance and risk management practices, breach remediation processes, addressing poor risk culture and strengthening accountability mechanisms'. In addition, the directors also require AMP Super to 'renew and strengthen its board' as areas for improvement.

APRA also requires AMP Super to engage an external expert to report on remediation and compliance with the new directions and conditions.

In a statement, to the market AMP said that it would fully implement the directions and additional conditions. 'We have been working constructively with APRA on this matter and have already taken action on a number of the issues raised'.

APRA's new 'constructively tough' approach to enforcement: APRA says that the action demonstrates its commitment to embedding the new 'constructively tough' enforcement approach outlined in April (see: Governance News 17/04/2019).

APRA notes that this is the second time it has used the broader directions power that was granted in April following the passage of the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2019*. APRA imposed licence conditions on IOOF in April for failing to establish a dedicated superannuation trustee function by the 31 March 2019 (see: Governance News 29/05/2019).

[Sources: APRA media release 14/06/2019; [registration required] The Australian 15/06/2019; [registration required] The AFR 15/06/2019]

ASIC has announced that ANZ has complied with the Court Enforceable Undertaking (CEU) entered into with the regulator in March

The Australian Securities and Investments Commission (ASIC) has announced that that ANZ has complied with the court enforceable undertaking (EU) entered into with the regulator in March regarding its fees-for-no-service conduct for its Prime Access service.

ASIC states that it is satisfied with an audited attestation it received from ANZ, and an independent expert report from Ernst and Young and as such ANZ's compliance with the obligations under the EU is now finalised, except for the payment of some remaining refunds due to clients, to be completed by mid-July 2019.

The statement adds that ASIC is aware that ANZ will no longer offer the Prime Access service to new customers and that ANZ will phase it out for current customers over the next 18 months. ASIC states that it will monitor this.

[Sources: ASIC media release 14/06/2019; [registration required] The AFR 14/06/2019; [registration required] The Australian 15/06/2019; InvestorDaily 14/06/2019]

ASIC has approved AFCA Rule changes for legacy complaints: AFCA said it will accept complaints from 1 July 2019 and follow its usual practice of referring them back to the financial firms for resolution. It will start investigating any unresolved matters from 1 October 2019

The Australian Securities and Investments Commission (ASIC) has approved changes to the Australian Financial Complaints Authority (AFCA) Rules which give effect to the AFCA authorisation condition introduced by Government on 19 February 2019.

[Note: In line with the government's initial response to the Financial Services Royal Commission Final Report recommendations, Treasurer Josh Frydenberg announced in February that the government had extended the Australian Financial Complaints Authority's (AFCA's) remit to consider eligible financial complaints dating back to 1 January 2008 (see: Governance News 27/02/2019)]

In a statement welcoming ASIC's announcement, AFCA Chief Ombudsman and CEO David Locke, said that AFCA has identified thousands of complaints that could potentially be made to it, based on those that were previously lodged but deemed outside the jurisdiction of previous schemes. He added that there will also be 'many matters' that were never lodged with a tribunal that may now be brought to AFCA. 'We also expect that these matters are likely to be highly complex, and further complicated by the number of years that have passed since the issue occurred' he said.

AFCA said it will accept complaints from 1 July 2019 and follow its usual practice of referring them back to the financial firms to resolve them. Mr Locke said that AFCA expects financial firms to 'proactively resolve these legacy matters themselves where possible as part of their commitment to justly remediate the misconduct of the past and meet the community's expectations of fairness'. If firms are unable to satisfactorily resolve the complaints, Mr Locke said AFCA will start investigating these matters from 1 October 2019.

[Source: ASIC media release 18/06/2019; AFCA media release 18/06/2019]

ASIC has issued guidance for AFS licensees about how they can mitigate the risks to their clients and business of share sale fraud

The Australian Securities and Investments Commission (ASIC) has identified a rise in the instance of share sale fraud, primarily in connection with issuer-sponsored holdings. In response, ASIC has issued Information *Sheet 237 Protecting against share sale fraud*, to provide guidance to AFS licensees about how they can mitigate the risks to their clients and business of share sale fraud.

The information sheet provides guidance with respect to ASIC's expectations around licensees' management of: one off share sales; customer due diligence; ongoing customer due diligence; intermediary clients; anti-money laundering and counter-terrorism financing (AML/CTF) training; and reporting on suspicious matters.

ASIC states that it considers that robust account opening and customer due diligence practices can be effective in preventing fraudulent activity such as share sale fraud.

[Sources: ASIC media release 18/06/2019; Information Sheet 237 Protecting against share sale fraud]

United Kingdom | Are homebuyers being treated fairly? The CMA has launched a consumer law investigation into the leasehold market

The UK Competition and Markets Authority (CMA) has launched an investigation into whether homebuyers are being treated fairly following 'ongoing concerns' about leasehold contract terms.

The investigation will consider two issues: 1) potential misspelling (ie whether people who have bought a leasehold property are given the information they need to fully understand the obligations they are taking on and whether they have an accurate understanding of their ability to buy their freehold); 2) potential unfair terms (ie whether people are having to pay excessive fees due to unfair terms).

The CMA states that it is requesting companies in the sector to provide information about contracts used and how leaseholds are sold and managed. In addition, the CMA calls on people to share experiences that could be relevant to assist the regulator in understanding the impact of these practices.

[Sources: CMA media release 11/06/2019; The Guardian 12/06/2019]

In Brief | APRA's proposed supervisory levies for 2019-20: The Insurance Council of Australia's submission to Treasury raises a number of concerns about the proposed increased levy on the sector including why the charges should rise at a higher annual rate for general insurers than banks and calls for consideration to be given to implementing the Australian National Audit Office recommendation that a stakeholder panel be established to discuss issues relating to the levies processes

[Note: The proposal referred to was released by Treasury for consultation on 4 June. Consultation will close on 19 June (see: Governance News 05/06/2019). Separately, the Customer Owned Banking Association has also raised concerns about the proposed increase (see: Governance News 12/06/2019).]

[Sources: Insurance Council of Australia submission: Proposed Financial Institutions Supervisory Levies for 2019-20 13/06/2019; [registration required] The Australian 15/06/2019]

In Brief | Fintech has become mainstream? EY's third biennial FinTech adoption trends survey, has found that awareness of fintech is at record levels — 96% of the 27,000 consumers surveyed (across 27 global markets) reported they were at least aware of a FinTech transfer or payments service — and

75% of people had used one. In Australia, 58% of Australians are now using fintech products and services

[Sources: EY media release 03/06/2019; EY Global FinTech adoption Index 2019; Investor Daily 13/06/2019]

In Brief | UK neobank Revolut launched in Australia: UK neobank Revolut has reportedly joined Xinja, Volt Bank, 86 400 and Up in offering (certain) digital only banking services such as money transfers in Australia. Reportedly Revolut has obtained a banking licence from the European Central Bank, but (as it has no plans to accept deposits) will not need an ADI license from prudential regulator APRA

[Sources: The SMH 13/06/2019; Business Insider 17/06/2019]

Accounting and Audit

United States | KPMG has agreed to pay a $50m penalty to settle SEC allegations it altered past audit work after receiving 'stolen information' about planned PCAOB inspections and for 'cheating on training exams'

The US Securities and Exchange Commission (SEC) issued a statement announcing that it has charged KPMG LLP with altering past audit work after receiving stolen information about planned inspections to be conducted Public Company Accounting Oversight Board (PCAOB). The SEC's order also finds that 'numerous KPMG audit professionals cheated on internal training exams by improperly sharing answers and manipulating test results'. The exams related to continuing professional education and training mandated by a prior SEC order finding audit failures.

KPMG has agreed to settle the charges by paying a $50 million penalty and complying with a detailed set of undertakings, including retaining an independent consultant to review and assess the firm's ethics and integrity controls and its compliance with various undertakings.

KPMG admitted the facts in the SEC's order and also acknowledged that its conduct violated a PCAOB rule requiring the firm to maintain integrity in the performance of a professional service and provides a basis for the SEC to impose remedies against the firm pursuant to Sections 4C(a)(2) and (a)(3) of the Exchange Act and Rules 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice.

The SEC states that its investigation is continuing.

SEC Chairman Jay Clayton commented 'High-quality financial statements prepared and reviewed in accordance with applicable accounting principles and professional standards are the bedrock of our capital markets. KPMG's ethical failures are simply unacceptable. The resolution the Enforcement Division has reached holds KPMG accountable for its past failures and provides for continuing, heightened oversight to protect our markets and our investors.'

Associate Director of the SEC's Enforcement Division Melissa Hodgman said that 'the sanctions will protect our markets by promoting an ethical culture at KPMG…To that end, KPMG will take additional remedial steps to address the misconduct and further strengthen its quality controls, all of which will be reviewed and assessed by an independent consultant.'

[Sources: SEC media release 17/06/2019; FCPA blog 17/06/2019; [registration required] The AFR 18/06/2019]

Risk Management

Top Story | Lessons on privacy, data protection and trust in financial services

During Privacy Awareness Week in May 2019, MinterEllison hosted a roundtable lunch with 16 senior privacy specialists in the financial services sector to consider some of the challenges and opportunities facing the financial services industry. MinterEllison has released a summary of the key themes to emerge from the discussion which can be accessed on the MinterEllison website here: https://www.minterellison.com/articles/privacy-data-protection-trust-in-financial-services

In Brief | Former APRA Chair and author of APRA's prudential inquiry into the CBA John Laker has reportedly told delegates at the Governance Institute of Australia's governance and risk management forum that cultural change should not be viewed as a project to be completed but as an ongoing challenge that needs to be worked on continually. 'There's a risk if you put a time limit on when you think the job is completed, because it's a job that requires constant attention' Dr Laker reportedly said

[Source: [registration required] The AFR 18/06/2019]