

Governance News

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Boards and Directors

AICD governance agenda announced: The AICD has announced plans to issue additional guidance on remuneration and governance issues, a consultation on directors' duties and on measures to enhance accountability, and plans to issue stronger member code of conduct

The Australian Institute of Company Directors (AICD) Chair and CEO have jointly announced the AICD's 'forward governance agenda'. The AICD intends to focus on four areas.

1. **Directors' Duties:** Though welcoming of the decision against inclusion of the term 'social licence to operate' in the fourth edition of the ASX Principles and Recommendations (discussed in a separate post in this issue of Governance News) and supportive of the current formulation of directors' duties under the Corporations Act, the AICD plans to 'lead a conversation' with members and stakeholders to test the understanding and application of the best interests duty in practice. There is a gap, The AICD notes in perception between what boards believe they do to consider stakeholder interests, and the community's view and 'the community needs to trust that we — as directors — take account of stakeholder, ethical and societal issues as part of our duties'.
2. **Standards and professionalism:** The AICD plans to strengthen its Member Code of Conduct and to clarify its application. In addition, the AICD plans to update its Professional Development framework so that it reflects the standards of practice and ethics in line with member expectations.
3. **Enhancing accountability:** The AICD will consult with stakeholders and practicing directors on proposals to enhance accountability. This will include discussion of annual director elections for listed companies and guidance to address the issue of overboarding.
4. **Governance and remuneration:** Working with members and stakeholders, the AICD plans to issue more guidance to support directors on governance and remuneration issues. For example, with respect to remuneration the planned guidance is intended to assist directors in balancing short and long-term interests between different investors, shareholders and stakeholders. The guidance will take into account the lessons from the recent Financial Services Royal Commission and other inquiries and is intended to have broad application.

Timeline: The AICD will invite member views on its agenda through an Issues Paper to be released in March 2019.

[Sources: AICD media release 04/03/2019; AICD agenda 04/03/2019; [registration required] The Australian 04/03/2019]

Leadership changes announced at BHP and ANZ

- BHP has announced changes to its executive leadership team to 'reflect BHP's simplified portfolio and transformation agenda'. Geraldine Slattery (President, Operations Petroleum), Vandita Pant (Chair Commercial Officer), Johnathan Price (Chief Transformation Officer) and Laura Tyler (Chief Geoscientist) will join BHP board.
- ANZ has announced a new management structure for its Australian business. As part of this, Group Executives Mark Hand and Maile Carnegie will share responsibility for the financial performance of ANZ's business in Australia. Mark Hand has been appointed Group Executive Australia Retail and Commercial Banking. Maile Carnegie has taken on an expanded role as Group Executive Digital and Australia Transformation. The changes have been made as part of a broader transformation project at the bank, according to the statement.

The AFR suggests that the changes at both companies, and more particularly the appointments of transformation officers, reflect a broader shift towards companies taking on control of projects themselves rather than using external consultants. The article adds that there is 'considerable cynicism in some quarters of the market' about the emergence and efficacy of chief transformation officers.

[Sources: BHP ASX Announcement 28/02/2018; ANZ ASX Announcement 28/02/2019; The SMH 28/02/2019; [registration required] The AFR 28/02/2019; 28/02/2019]

Still work to do? Though there has been some progress towards gender parity in Australian workplaces, women remain underrepresented in leadership roles, and the systemic pay gap persists according to a WGEA/BCEC report

The Bankwest Curtin Economics Centre and the Workplace Gender Equality Agency have released a report into progress towards gender parity in Australian workplaces entitled *Gender Equity Insights 2019: Breaking through the glass ceiling*. The report provides insight into progress in different sectors in recent years and also highlights the role flexible workplace policies, employer provided on-site child care and employer funded paid parental leave has in ensuring women continue to progress into senior positions and in narrowing the gender pay gap.

Some Key Findings

Gender parity is still some time away

CEO: parity by 2100

Key Management personnel:
parity year 2039

Executives: parity year 2047

Senior Managers: parity year 2037

Other Managers: parity year 2031

All Managers: parity year 2042

Women make up 71.0% of the workforce, but only 51.9% of top-tier management.

Though women are progressing into management roles at a faster rate than men, it will take 20 years for women to have equal representation in full time management positions.

Based on the 5 years of WGEA data and the rate of change, it will take 80 years for women to have equal representation in CEO roles. The report describes the 1.1% rate of progress over the past five years as 'glacial'.

Progress on moving women into leadership roles was found to be moving more quickly in some sectors than others with finance, insurance and healthcare sectors showing slower progress. The report found that though Finance and Insurance's full-time workforce consists of 48.1% women, the share of female full-time managers is only 37.7%. Women are also under-represented in management positions in the Health Care sector with the

majority of female managers holding lower level day-to-day management positions (72.3%).

- **Systemic gender pay gap persists:** At every management tier the salaries available to men are higher than those available to women. The highest paid 10% of men will earn at least \$600K in total salary, whereas the highest paid 10% of women will earn \$436K, a difference of over \$160K. Rental Hiring and Real Estate sectors have the highest pay gap of 35.6%. This is closely followed by the Retail and Finance and Insurance sectors.
- **Flexible workplaces and paid parental leave are identified as key to staff retention:**
 - Flexible workplaces with paid parental leave schemes were found to be integral to retaining female staff members during and after pregnancy but over half of Australian organisations still offer no employer-funded paid parental leave limiting employees' parental leave access to only the Australian Government Paid Parental Leave Scheme, where payment is restricted to the relevant national minimum wage.
 - Organisations providing additional parental leave support to primary carers are seeing greater retention of staff. Employer-funded paid parental leave schemes covering 13+ weeks have been found to halve the share of managers who resign during paid parental leave in comparison to those with access to only the Australian Government scheme.
 - Workplaces that provide on-site childcare have been found to prevent the loss of female managers during paid parental leave by almost one-fifth.
- **Progress should start at the top:**

- The share of female full-time manager's increases by an average of 8.6% for companies with a female CEO.
- Moving from zero to equal female representation on company boards increases the share of full-time female managers by 7.3% and the share of part-time female managers by 13.7%.

[Sources: Bankwest Curtin Economics Centre media release 01/03/2019; BCEC Report: Gender Equity Insights 2019: Breaking through the glass ceiling; [registration required] The AFR 28/02/2019]

In Brief | Reportedly UK Business minister Kelly Tolhurst has written to the directors of FTSE 100 companies calling for them to accelerate progress in appointing directors from ethnic minority backgrounds or risk government intervention. Reportedly, FTSE 100 companies have been asked to have at least one BAME director by 2021, the FTSE 250 by 2024

[Source: [registration required] The Times 24/02/2019; Board Agenda 25/02/2019]

Remuneration

Voluntary ethnicity pay gap reporting in the UK: 15 UK organisations (including the BoE) have reportedly committed to reporting their ethnicity pay gaps

The Bank of England and 14 other UK organisations have reportedly committed to reporting any gaps in pay between employees based on ethnicity. The announcement comes a year after the UK mandated that companies with 250 or more employees must report their gender pay gap.

In 2018, Prime Minister Theresa May's government reportedly said it was launching a consultation into possible mandatory ethnicity pay gap reporting. Also in 2018, UK think tank, the Resolution Foundation, reportedly estimated the total cost of pay penalties experienced by members of ethnic minorities was around £3.2 billion (\$4.2 billion) per year.

[Source: Quartz 01/03/2019]

NAB has reportedly made changes to incentives for non-executive staff as 'another step' in a broader process review of remuneration structures

The Australian reports that National Australia Bank (NAB) has made changes to pay structures for non-executive staff. The changes, reportedly include the following.

- **40% of bonuses deferred for a period of three years for the bank's top 400 managers:** According to the Australian, the bank's top 400 staff will have a greater proportion (40%) of their bonuses deferred over a period of three years. The Australian describes this is a much 'tougher approach' than the previous arrangement (25% deferred for 12 months).
- **30% of performance bonuses (of \$50,000) deferred for a period of two years for other staff:** For NAB staff (outside the top 400 managers) who are awarded a bonus of \$50,000 or above due to performance, 30% will be deferred for two years.

Reportedly, NAB is also liaising with regulators and investors over a revised pay framework for its executive team, which is expected to be finalised after the release of guidelines from the Australian Prudential Regulation Authority (APRA) in June.

This second round of changes follow changes made last year to pay for frontline call centre and branch staff which saw non-financial metrics (eg customer advocacy and compliance) added to performance measurement. NAB has characterised them 'another step' in a broader process of improvement in remuneration structures. NAB's executive general manager of performance and reward, Lynda Dean is quoted as stating that the bank is 'confident it [the changes] takes our reward practices in the direction shareholders would expect'. She reportedly added that the changes send a message to investors about 'performance assurance' and accountability for decisions, in addition to assisting with staff retention.

The Australian observes that the longer deferral period aligns with many large global investment banks that had their pay scrutinised heavily following the global financial crisis.

[Source: The Australian 28/02/2019]

Shareholder Activism

Recent developments: Climate activists have reportedly targeted QBE, Facebook is reportedly nearing a settlement with activists Elliott and Starboard, Caesars is also reportedly nearing a settlement with activist Carl Icahn

- **Climate activists targeting QBE (for a second year)?** The AFR reports that activist investors (Market Forces and Australian Ethical) have 'delivered' a shareholder resolution to QBE. According to the Market Forces website, the resolution calls on QBE to set targets for reducing its investment and underwriting exposure to fossil fuels in line with the Paris Agreement goal of limiting global warming to 1.5 degrees. Reportedly Market Forces intends to lobby QBE's institutional shareholders, to support the resolution in the lead-up to the company's annual meeting in May.

[Note: Market Forces lodged a climate disclosure resolution at QBE in 2018. Though unsuccessful, QBE committed to enhancing climate risk disclosure in accordance with the Taskforce on Climate Related Financial Disclosures (TCFD) recommendations in line with the shareholder resolution. See: Governance News 07/05/2018]

[Sources: [registration required] The AFR 04/03/2019; Market Forces media release 05/03/2019; 04/03/2019]

- **Facebook is nearing a settlement with activist funds?** Activists Elliott and Starboard Value are reportedly getting closer to securing multiple board seats at Facebook. The WSJ reports that though not yet agreed, the activists are nearing a deal with Facebook that would give activist representatives board seats, and may, The WSJ suggests, open the door to the company breaking itself up. Reportedly, potential review of Ebay's operations, including exploring a sale of the company's ticket resale site Stubhub as well as its classifieds business is also on the table.

[Sources: [registration required] The WSJ 26/02/2019; Bloomberg 27/02/2019]

- **Caesars Entertainment Corp is nearing a settlement with activist Carl Icahn?** Following activist Carl Icahn's disclosure of a 9.8% stake in Caesars Entertainment Corp, and his subsequent call for the company to explore a sale, the two sides are reportedly nearing an agreement. Reportedly, the agreement would see Mr Icahn able to nominate a 'slate of directors' (the number of seats/potential candidates are reportedly not known) to Caesars' board and also give him a role in the selection of the new CEO. Reportedly, Mr Icahn has already proposed Anthony Rodio, the CEO of privately held casino gaming company Affinity Gaming, as the successor Caesar's current CEO (due to step down later this year). Caesars has reportedly agreed to consider M Rodio for the role, in addition to their own shortlist of candidates. The deadline for Mr Icahn to nominate his proposed board nominees reportedly expires on 1 March. If agreement is not reached, media reports suggest that Caesars may elect to extend the nomination deadline/continue to negotiate with Mr Icahn.

[Sources: The Street 25/02/2019; CNBC 25/02/2019]

Other Shareholder News

Top Story | Revised ASX Corporate Governance Principles and Recommendations released: The controversial 'social licence to operate' terminology has been abandoned in the final version but the intent remains embedded?

The fourth edition of the ASX Corporate Governance Council's (the Council's) Corporate Governance Principles and Recommendations was released on 27 February 2019 following consultation.

Commenting on the changes, Chair of the ASX Corporate Governance Council Elizabeth Johnstone said that the revised Principles and Recommendations address 'emerging issues around culture, values and trust, fuelled by recent examples of conduct by some listed entities falling short of community standards and expectations'.

The revised Principles and Recommendations come into force for financial years commencing on or after 1 January 2020.

Key Takeaways

1. The term, 'social licence to operate' does not appear in the final version of the fourth edition. Instead, it has been replaced with references to 'reputation' and 'standing in the community'. The Council states that it views these terms as 'synonymous' with 'social licence to operate' and 'more likely to be better understood and more consistently applied by listed entities, their boards and other stakeholders'.
2. The fourth edition includes the expectation that companies act to 'preserve and protect' their 'reputation and standing in the community and with key stakeholders, such as customers, employees, suppliers, creditors, law makers and regulators'. The Council maintains that the fourth edition includes 'all of the key changes around culture and values proposed in the consultation draft'.
3. There is a new requirement for listed entities to articulate and disclose their organisational values and ensure alignment with business strategy, remuneration structures and delivery of long-term growth.
4. The fourth edition lists a number of new board responsibilities (aimed at supporting strong culture and governance) including: responsibility for defining organisational purpose, ensuring alignment between remuneration policies and the entity's purpose, values, strategic objectives and risk appetite and a stronger focus on the role of the board in overseeing management and where necessary, challenging management.
5. Boards are also encouraged to monitor the adequacy of their organisation's risk management strategy (for financial and non-financial risk). This includes ensuring risk strategies deal adequately with contemporary and emerging risks such as conduct risk, digital disruption, cyber-security, privacy and data breaches, sustainability and climate change.
6. Remuneration is identified as a 'key driver of culture' as well as a focus for investors. The revised commentary makes clear that when determining appropriate remuneration structures, consideration should not only be given to incentivising executives and directors to pursue the growth and success of the organisation, but also to the need to ensure that incentives don't reward 'conduct that is contrary to the entity's values or risk appetite'. In addition, consideration should be given to the implications of being perceived by the community to be paying excessively.
7. Companies are also encouraged to improve climate and other non-financial risk disclosure by focusing on material environmental and social risks, including by reference to the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD).
8. There is a new requirement for listed entities to have and to disclose a gender diversity policy (in full) and to set measurable objectives for achieving gender diversity for senior executives and the workforce generally. The measurable objective for achieving gender diversity in board composition should be 30% for organisations in the S&P/ASX 300 Index.

What has not changed?

The fourth edition maintains the same 'flexible, non-mandatory "if not, why not" approach' to disclosure as in the third edition. It also has the same structure: eight core principles, supporting recommendations, and commentary with guidance on implementing the recommendations.

Overview of changes

New recommendations

The fourth edition contains 35 recommendations (compared to 29 in the third edition), including seven new recommendations. The new recommendations are as follows.

- Recommendation 3.1: A listed entity should articulate and disclose its values. and ensure that the board or a committee of the board is informed of any material incidents reported under that policy.
- Recommendation 3.3: A listed entity should have and disclose a whistleblower policy;

- Recommendation 3.4: A listed entity should have and disclose an anti-bribery and corruption policy; and ensure that the board or a committee of the board is informed of any material breaches of that policy.
- Recommendation 4.3: A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor.
- Recommendation 5.2: A listed entity should ensure that its board receives copies of all material market announcements promptly after they have been made.
- Recommendation 5.3: A listed entity that gives a new and substantive investor or analyst presentation should release a copy of the presentation materials on the ASX Market Announcements Platform ahead of the presentation.
- Recommendation 6.4: A listed entity should ensure that all substantive resolutions at a meeting of security holders are decided by a poll rather than by a show of hands.
- There are also two new recommendations that only apply to a small subset of listed entities.
 - Recommendation 9.1: A listed entity with a director who does not speak the language in which board or security holder meetings are held or key corporate documents are written should disclose the processes it has in place to ensure the director understands and can contribute to the discussion at those meetings and understands and can discharge their obligations in relation to those documents.
 - Recommendation 9.2: A listed entity established outside Australia should ensure that meetings of security holders are held at a reasonable place and time.

Changes to address governance issues arising from poor conduct or culture

In the final version, Principle 3 has been substantially redrafted to place a stronger emphasis on culture and values. It reads: 'a listed entity should instil and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly'. The revised principle is supported by three new recommendations: articulation and disclosure of organisational values (3.1), whistleblower policy (3.3) and an anti-bribery and corruption policy (3.4).

The Council notes that a number of submissions did not agree with the focus on culture in the fourth edition on the basis that 'the Principles and Recommendations should not attempt to prescribe culture' and that 'the focus of regulation should be on behaviour and not culture'. The Council explains that the changes were retained in the final version on the basis that they are considered 'fundamental' and necessary to addressing the governance and conduct issues raised in recent inquiries and to rebuilding trust.

The Council states that the fourth edition includes 'all of the key changes around culture and values proposed in the consultation draft' with some 'drafting changes'. Notable among these drafting changes is the decision against inclusion of the term 'social licence to operate' in the final version.

Has the concept of the 'social licence to operate' been abandoned or is the intent still embedded?

According to the Council, the proposed introduction of the term 'social licence to operate' into the fourth edition was 'unquestionably the most polarising issue addressed in the consultation feedback'.

The Council explains that the term was intended 'to convey the notion that a listed entity's long term sustainable success is dependent on maintaining the trust and goodwill of the various social groups with which it interacts'. However, submissions to the consultation raised concerns that that the term is 'vague and subjective', could be 'confused or conflated' with community support for particular social agendas, and that the notion of 'broader stakeholder accountability' inherent in it, might conflict with the duties of directors.

In response to this, the Council explains that the term has been 'replaced' in the fourth edition with references to 'reputation' and 'standing in the community'. Commentary under recommendation 3.1 (A listed entity should articulate and disclose its values) reads:

'In formulating its values, a listed entity should consider what behaviours are needed from its officers and employees to build long term sustainable value for its security holders. This includes the need for the entity to preserve and protect its reputation and standing in the community and with key stakeholders, such as customers, employees, suppliers, creditors, law makers and regulators.'

The Council states that it regards these concepts [standing in the community and reputation] as synonymous [with the term social licence to operate] and adds that the 'modified terminology is more likely to be better understood and more consistently applied by listed entities'. The revised terminology is also consistent, in the Council's view, with the views put forward by Commissioner Kenneth Hayne.

Commenting on this, Governance Institute of Australia CEO Megan Motto is quoted in The AFR as stating that ' "[The guidance is] keeping step with the times but doing so in a language that is more meaningful and will not polarise but bring people together. That's the reason social licence to operate has been withdrawn as a piece of language even though the intent of that is still very much embedded'.

However, the deletion of the term 'social licence to operate' has been interpreted in some media reports as abandonment of the concept entirely.

Non-financial risk — a focus on 'should we do it'?

In addition to a strong focus on culture and values, the fourth edition has stronger focus on management of non-financial risk. For example, commentary has been added under recommendation 7.2 to make clear that one of 'the key roles of the board of a listed entity' is to monitor the adequacy of the entity's financial and non-financial risk management framework. This includes satisfying itself that the risk management framework deals adequately with contemporary and emerging risks such as conduct risk, digital disruption, cyber-security, privacy and data breaches, sustainability and climate change.

A footnote to this commentary notes that this approach to risk is consistent with the approach taken in APRA's Prudential Inquiry into the Commonwealth Bank of Australia, which stated that: 'Conduct risk is 'the risk of inappropriate, unethical or unlawful behaviour on the part of an organisation's management or employees.' At its simplest, conduct risk management goes beyond what is strictly allowed under law and regulation ('can we do it?') to consider whether an action is appropriate or ethical ('should we do it?').'

Disclosure of ESG risks

The fourth edition includes a number of measures to encourage improvements to disclosure of environmental, social and governance (ESG) risks. These include the following.

- The definitions of 'economic sustainability', 'environmental sustainability' and 'social responsibility' have been replaced in the fourth edition with 'environmental risks and 'social risks' to capture broader range of risks. Recommendation 7.4 now states that a 'listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks'.
- The commentary has been expanded to state that entities who elect to publish an integrated report in accordance with the International Integrated Reporting Council's International <IR> Framework, or a sustainability report in accordance with a recognised international standard may meet the recommendation by cross-referring to that report (though doing so is not required).
- With respect to risks associated specifically with climate change, the commentary encourages entities to benchmark their disclosures against their peers and 'to consider whether they have a material exposure to climate change risk by reference to the recommendations of the Financial Stability Board's Task Force on Climate- related Financial Disclosures (TCFD) and, if they do, to consider making the disclosures recommended by the TCFD'.

Australian Council of Superannuation Investors (ACSI) CEO Louise Davidson has welcomed the changes, and in particular the focus on management of non-financial risk. Ms Davidson said that the approach taken is 'consistent with ACSI's long-standing approach. Effective management of ESG risks supports a company's ability to create long-term value for its security holders.'

Board-related changes

Board responsibilities

Recommendation 1.1 includes a number of changes with respect to the role and responsibilities of the board, including with respect to the role of the board in 'instilling of the entity's values and performance generally'.

The fourth edition lists a number of new board responsibilities (aimed at supporting strong culture and governance). These include responsibility for:

- defining the entity's purpose
- approving the entity's statement of values and 'code of conduct to underpin the desired culture within the entity'
- satisfying itself that the entity has in place an appropriate risk management framework (for both financial and non-financial risks) and setting the risk appetite within which the board expects management to operate
- satisfying itself that an appropriate framework exists for relevant information to be reported by management to the board
- challenging management and holding it to account
- satisfying itself that the entity's remuneration policies are aligned with the entity's purpose, values, strategic objectives and risk appetite
- monitoring the effectiveness of the entity's governance practices

New commentary has also been added to provide additional guidance on the role of the senior executive team and the role of the Chair. More particularly, the commentary to recommendation 1.1 has been amended to make it clear that the 'senior executive team is responsible for providing the board with accurate, timely and clear information on the entity's operations to enable the board to perform its responsibilities and that this is not just limited to information about the financial performance of the entity, but also its compliance with material legal and regulatory requirements and any conduct that is materially inconsistent with the values or code of conduct of the entity'.

Independence

The commentary in Box 2.3 (indicators of director independence) has been amended to: a) extend 'material business relationships' to include relationships as professional advisers and consultants; b) change 'close family ties' to 'close personal ties', along with the inclusion of commentary that these ties may be based on 'family, friendship or other social or business connections'; and c) to clarify that the reference to 'independence' having been compromised by long tenure refers to independence from management and substantial holders.

The commentary accompanying recommendation 2.3 states that where a director falls within one or more of the examples given, the board should rule the director not to be independent unless it's clear that it is not material and will not interfere with the directors' independent judgement and capacity to act in the best interests of the company.

With respect to board tenure, the revised Principles and Recommendations do not set a maximum tenure limit for board members. The commentary states that 'The mere fact that a director has served on a board for a substantial period does not mean that the director has become too close to management or a substantial holder to be considered independent. However, the board should regularly assess whether that might be the case for any director who has served in that position for more than 10 years'.



Overboarding

The commentary to recommendation 1.3 has been expanded to specify non-executive directors should be required to notify the organisation of 'or to seek the entity's approval before accepting any new role that could impact upon the time commitment expected of the director or give rise to a conflict of interest'.

Boards skills

In the consultation draft, it was proposed that new commentary be added to recommended 2.2 suggesting that boards give consideration to whether they have the necessary skills to deal with existing and emerging business and governance issues including: culture, conduct risk, digital disruption, cyber-security, sustainability and climate change. However, persuaded by arguments against the change (for example that inclusion of the list of skills implies boards need to be comprised of subject matter experts) the Council determined not to proceed. Instead, commentary has been added under recommendation 7.2 to make clear that one of 'the key roles of the board of a listed entity is to monitor the adequacy of the entity's risk management framework and satisfy itself that the entity is operating with due regard to the risk appetite set by the board.

Separately, some changes were made with respect to ensuring boards have and maintain the necessary skills to fulfil their roles, and to improve disclosure around board skills.

- Recommendation 2.6 has been amended to provide that entities should not only have an induction program for new directors, but that they should 'periodically review whether there is a need for existing directors to undertake professional development to maintain the skills and knowledge needed to perform their roles.'
- The commentary under recommendation 2.2 (concerning the use of a board 'skills matrix') has been expanded to reflect that investors would find it helpful for the entity to explain what it means when it refers to a particular skill in its board skills matrix and the criteria a director must meet to be considered to have that skill.

Board evaluation

Recommendation 1.6 has been amended to require that boards disclose, for each accounting period, whether a board evaluation has been undertaken during that period. The commentary states that the Council's preference is that this occur annually, but this is not specified in the recommendation.

(Gender) diversity

Recommendation 1.5 requires that boards (or a committee) have and disclose a diversity policy (in full) and to set measurable objectives for achieving gender diversity for senior executives and the workforce generally. The measurable objective for achieving gender diversity in board composition should be 30% for organisations in the S&P/ASX 300 Index.

The commentary suggests that the board or committee may wish to consider setting key performance indicators for senior executives on gender participation within their areas of responsibility and linking part of their remuneration to the achievement of those KPIs and also that gender diversity should be considered in the context of succession planning.

The Council states that at this stage it considers also requiring gender pay audits/disclosure of gender pay audits (to address the gender pay gap) to be 'too prescriptive' at this point in time.

The commentary has also been amended to 'recommend' that 'boards of listed entities consider other facets of diversity in addition to gender when considering the composition of the board. In particular, having directors of different ages, ethnicities and backgrounds can help bring different perspectives and experiences to bear and avoid "groupthink" or other cognitive biases in decision making'.



Remuneration

Changes have been made to Principle 8 and its supporting principles to better align executive pay with organisations' values and risk appetites.

- The commentary to recommendation 8.1 now identifies remuneration as a 'key driver of culture' as well as a focus for investors. When setting remuneration, the commentary now specifies that consideration should be had not only to the need for remuneration to incentivise executives and directors to pursue the growth and success of the entity, but also to the need to ensure that incentives don't reward 'conduct that is contrary to the entity's values or risk appetite'. In addition, the commentary now states that consideration should be given to the implications of being perceived by the community to be paying excessively.
- Likewise, commentary under recommendation 8.2 now states that performance-based remuneration (for executives) should be linked to clearly specified performance targets, aligned to the entity's short, medium and longer term performance objectives and should be consistent with its circumstances, purpose, strategic goals, values and risk appetite. In addition it states that discretion should be retained, where appropriate, to prevent performance-based remuneration rewarding conduct that is contrary to the entities values or risk appetite.

Other changes

- **New recommendation 4.3 (integrity of corporate reports):** The recommendation states that 'A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor'. The commentary suggests that the process can be disclosed in the report itself, in the governance discloses in the annual report or on the company's website.
- **New recommendation 5.2 (copies of market announcements to the board):** The commentary states that the purpose of the recommendation is to ensure 'that the board has timely visibility of the nature and quality of the information being disclosed to the market and the frequency of such disclosures'.
- **New recommendation 5.3 (investor and analyst presentations):** This recommendation is directed, the commentary states, at 'ensuring equality of information among investors and applies regardless of whether the presentation contains material new information required to be disclosed under listing rule 3.1'. Examples of 'substantive' presentations include: results presentations and the types of presentations typically given at annual general meetings, investor days and broker conferences.
- **New recommendation 6.4 (votes should be decided by a poll rather than by a show of hands)** The commentary states that the principle of 'one security one vote' is 'enshrined in the listing rules. Deciding votes of security holders on the basis of a show of hands, regardless of the number of securities held, is inconsistent with this principle'.

[Note: ASIC's report on 2017 and 2018 AGM seasons expressed concern that a relatively high number of ASX 200 companies (25 companies in the ASX 200 in 2017 and 11 companies in the ASX 200 in 2018) continued to decide resolutions by a show of hands rather than by conducting a poll. See: Governance News 05/02/2018; 13/02/2019.]

[Note: For coverage of the consultation draft see: Governance News 04/05/2018. For coverage of the debate concerning the proposed changes see: 06/08/2018].

[Sources: ASX Corporate Governance Council media release 27/02/2019; ASX Corporate Governance Principles and Recommendations: Fourth Edition; Consultation response; mark-up: comparison of the fourth edition to the consultation version; mark-up: comparison of the fourth edition to the third edition; [registration required] The AFR 27/02/2019; 27/02/2019; 27/02/2019; ACSI media release 27/02/2019; Investor Daily 27/02/2019; The Conversation 047/03/2019; Financial Standard 28/02/2019; The Conversation 047/03/2019; [registration required] Governance Institute Report: Corporate Governance Principles and Recommendations]



Regulators

Top Story | ACCC's 2019 compliance and enforcement priorities

MinterEllison's competition team has written an article outlining the ACCC's enforcement priorities for 2019 the impact for industry and how MinterEllison can assist firms to respond. The full text of the article is available on the MinterEllison website here: <https://www.minterellison.com/articles/acccs-2019-compliance-and-enforcement-priorities>

[Source: ACCC's 2019 compliance and enforcement priorities 27/02/2019]

APRA policy priorities for 2019 announced: APRA will focus on 'strengthening the prudential framework to lift the bar for industry in terms of governance, remuneration practices, and the management of non-financial risks'

The Australian Prudential Regulation Authority (APRA) has released its annual Policy Priorities document, outlining its areas of intended policy focus over the next 12 to 18 months.

Overall areas of focus

- APRA Chair Wayne Byres said much of APRA's focus in 2019 would be on strengthening the prudential framework to 'lift the bar' for industry in terms of governance, remuneration practices, and the management of non-financial risks.
- APRA's short term policy agenda will be shaped by its response to the Hayne Commission and other major developments.
- APRA plans to work with the government and the Australian Securities and Investments Commission (ASIC) to extend the accountability model set out in the BEAR to the insurance and superannuation industries and to address misconduct.
- APRA will be revising its cross industry prudential standards in order to reflect the findings of the Royal Commission and APRA's Prudential Inquiry into the Commonwealth Bank of Australia. Among other things, this will include findings relating to executive remuneration and non financial risk management.
- APRA plans to release a new enforcement strategy released 'shortly': APRA is reviewing its approach to enforcement in light of the Banking Executive Accountability Regime (BEAR) and the CBA Prudential Inquiry, as well as the Hayne Commission's observations that APRA should develop a stronger appetite for formal enforcement action. The final review will be presented to APRA Members by the end of March and APRA intends to publish a new enforcement strategy shortly afterwards.

Some industry specific priorities

Priorities: authorised deposit-taking institutions (ADIs)

- Updating prudential standard APS 220 on credit risk management, including recommendations relating to valuations as recommended by the Final Report of the Royal Commission
- APRA will progress its proposals to implement the Basel III capital reforms and give effect to its expectations for 'unquestionably strong' capital ratios for authorised deposit-taking institutions, to take effect in 2022

Priorities: superannuation

- ensuring superannuation trustees are prepared to implement the new member outcomes assessments from 1 July (including any amendments required by legislative changes)
- updating the superannuation data collection, with a particular focus on expanding the information collected on choice products
- completing the post-implementation review of the prudential framework introduced in response to 2013's Stronger Super reforms and consulting on proposals to address areas where changes are needed



Priorities: general, life and private health insurance:

- consult industry on plans to apply the capital framework for life and general insurance to private health insurance (PHI), as part of Phase Three of APRA's PHI Roadmap
- release a discussion paper examining how the prudential framework for insurance may need to be modified in light of the new accounting standard, AASB 17

[Sources: APRA media release 28/02/2019; APRA policy priorities 2018 28/02/2019; Investor Daily 01/03/2019]

Climate is a material risk? In her address to the ANU 2019 Climate Update, ASIC Commissioner Cathie Armour reiterated that climate remains an area of focus for ASIC and outlined the regulator's views on the issue

In her address to the ANU 2019 Climate Update, Australian Securities and Investments Commission (ASIC) Commissioner Cathie Armour confirmed that climate risk remains a focus for the regulator and outlined ASIC's views on the issue.

'I suspect, and I am sure many of you will agree, that we are likely to see a continued focus on climate change risk and opportunity over coming months and years. ASIC intends to remain actively engaged in this area' Ms Armour said.

Key Point

ASIC's expectations: Among other things, Ms Armour reiterated the findings and recommendations in *ASIC Report 593: Climate risk disclosure by Australia's listed companies* and called on listed companies and their directors to: a) consider climate risk (adopt a 'probative and proactive approach' to emerging risks, including climate risk); b) develop and maintain strong and effective corporate governance to assist in identifying, assessing and managing material risks; c) 'comply with the law' which requires disclosure of material business risks affecting future prospects in an operating and financial review; and d) disclose useful information to investors ('we recommend that listed companies with material exposure to climate risk consider reporting under the TCFD framework').

[Note: For a high level overview of the findings and recommendations in ASIC report 593: Climate risk disclosure by Australia's listed companies see: Governance News 21/09/2018.]

Further detail

- **Directors' duties encompass a duty to consider climate change risk?** Noting that company directors are legally required to act with due care and diligence, in good faith and for a proper purpose and in the best interests of the company, Ms Armour reiterated ASIC's in principle support for the view put forward in the memorandum of opinion by Noel Hutley QC and Sebastian Hartford-Davis on *climate change and directors' duties*, that it is 'conceivable that directors who fail to consider climate change risks now could be found liable for breaching their duty of care and diligence in the future.' She went on to say that 'ASIC has stressed to company directors...the importance of firstly, considering the impact of climate change on the company's business and secondly, ensuring that strong and effective corporate governance practices are sustained in the company – which in our regulatory experience assists in the identification and management of emerging and complex issues'.
- **Disclosure**
 - **Material risks could include climate risk:** Ms Armour said that ASIC considers it 'likely to be misleading for directors to discuss the company's prospects for future financial years [in the context of the annual report] without referring to the material business risks that could adversely affect the achievement of those prospects. Such "material business risks" could include climate risk. On the other hand, where climate opportunity forms part of a business strategy, it may also need to be disclosed in an operating and financial review'. In addition, she observed that climate risk and opportunity may also be relevant for the purposes of complying with other statutory disclosure requirements such as fund-raising or prospectus disclosure, continuous disclosure for listed companies to the ASX and others.

- **Companies encouraged to voluntarily adopt the TCFD recommendations:** Noting that at least 30 of the top 100 listed companies in Australia have indicated that they intend to report under the Taskforce on Climate Related Financial Disclosures (TCFD) Recommendations (TCFD framework) or are considering doing so, Ms Armour said that ASIC encourages listed companies with material exposure to climate risk to strongly consider reporting under TCFD on a voluntary basis. She observed that it is likely to take a period of time for companies to develop the capabilities and expertise to disclose information under the framework 'that is meaningful and useful to users and does not mislead or deceive' and that ASIC is monitoring developments in this area as market practice evolves.

[Note: The commentary under recommendation 7.4 of the fourth edition of the [ASX Corporate Governance Principles and Recommendations](#) (released on 27 February) also encourages listed companies to report under the TCFD recommendations. For an overview of changes made in the fourth edition of the ASX Corporate Governance Principles see: [Governance News 04/03/2019](#)]

- **Climate risk is expected to be an area of continuing investor concern:** Ms Armour said that it is 'increasingly clear' that investors in Australia (eg, the Australian Council of Superannuation Investors (ACSI)) and internationally (eg BlackRock) are playing a leading role in the 'push for the provision of meaningful and useful climate risk disclosure'. She added that ASIC has observed strong levels of shareholder interest in the topic over the course of the 2018 AGM season and said that ASIC expects this interest to continue and to increase given the level of investor concern.
- **'Social licence to operate':** Commenting on the concept of the 'social licence to operate' Ms Armour said that 'for some company stakeholders, the social and environmental impact of corporate activity is an increasingly acute criterion considered in deciding which company to invest in or transact with. A salient question for boards and directors to ask now is therefore: "how do we identify the risks and opportunities presented by this new environment and respond in a manner that is both consistent with the social contract under which we operate and nurturing of long-term business success?". She went on to say that ASIC encourages directors to be 'cognisant of these issues — particularly so when evaluating complex and wide-ranging issues such as climate change'.

[Source: [ANU Climate Update, Address by ASIC Commissioners Sean Hughes and Cathie Armour 04/03/2019](#)]

In Brief | ASIC reportedly plans to use AI to improve the way in which it identifies problematic financial advice and misleading internet advertisements for financial products. However, the quality of data will first need to improve in order for the technology to be effective. ASIC Commissioner John Price said 'What natural language processing does not do is transform poor-quality data into high-quality data, and that's a challenge not only for us but the industry more broadly'

[Source: [\[registration required\] The AFR 03/03/2019](#)]

In Brief | ACCC digital platforms inquiry update: The ACCC says it will continue to analyse issues about the digital advertising supply chain affecting Australian advertisers (including how advertising is verified on the 'major digital platforms'

[Source: [ACCC media release 28/02/2019](#)]

In Brief | The Chair of the UK Competition and Markets Authority has proposed a range of reforms to competition and consumer protection law and policy to 'increase the scope and speed at which the CMA can act to address new and emerging forms of consumer detriment' (eg challenges posed by the growth of the digital economy and declining public confidence in market competition). These include proposals to enhance its powers to intervene in certain markets, business conduct and deals and strengthen individual and corporate accountability for non-compliance, while also limiting the checks on its activity under the appeal process

[Sources: [Competition and Markets Authority media release 25/02/2019](#); [Summary of proposals from Andrew Tyrie, CMA Chair, to the Secretary of State for Business, Energy and Industrial Strategy](#); [Letter from Andrew Tyrie, CMA Chair, to the Secretary of State for Business, Energy and Industrial Strategy \[registration required\] The FT 26/02/2019](#)]



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

Update on the government's actions to implement the Financial Services Royal Commission's Recommendations

Treasurer Josh Frydenberg has issued a statement outlining the government's actions to date in implementing the recommendations of the recently completed Financial Services Royal Commission.

The Treasurer also reiterated the government's commitment to actioning all 76 recommendations and his criticism of the Federal Labor party's response to date.

Recap: government actions taken to date

- extension of the Australian Financial Complaints Authority's remit to consider financial complaints dating back to 1 January 2008 (see: Governance News 27/02/2019)
- passage of legislation through the Senate to extend civil penalties to superannuation fund trustees and directors for breach of their best interests duty (Recommendation 3.7) and ban superannuation funds from inducing employers (Recommendations 3.6)

[Note: This appears to be a reference to *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017*. See: Governance News 13/02/2019; 20/02/2019]

- passage of legislation which will significantly increase criminal and civil penalties for corporate and financial sector misconduct

[Note: This appears to be a reference to *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Bill 2018* which passed both houses on the 18 February. See: Governance News 20/02/2019]

- Proposed amendments to legislation to introduce design and distribution obligations for all financial and credit products within the Australian Securities and Investments Commission's (ASIC) regulatory responsibility

[Note: This appears to be a reference to *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* which is currently before the House of Representatives. The government's proposed amendments to the Bill are [here](#).]

- Release of exposure draft legislation to ban grandfathering of conflicted remuneration paid to financial advisers (Recommendation 2.4) (see: Governance News 27/02/2019)
- directed ASIC to undertake an investigation to monitor and report on industry behaviour with respect to the banning of grandfathered conflicted remuneration

[Note: The details are included in a separate post in this issue of Governance News.]

- release of a consultation paper on removing the exemption of insurance claims handling from the definition of 'financial service' under the *Corporations Act 2001 (Cth)* (Recommendation 4.8)

[Note: The government has issued a consultation paper outlining the proposed approach to implementing FSRC recommendation 4.8: the exclusion of insurance claims handling from the definition of 'financial service' (for both life and general insurance products). This is covered in a separate post in this issue of Governance News.]

- commenced a capability review of the Australian Prudential Regulation Authority under the chairmanship of Graeme Samuel AC (Recommendation 6.13) (see: Governance News 13/02/2019)
- commenced an immediate review of financial counselling services (see: Governance News 13/02/2019)



- initiated work with the states and territories towards establishing a national farm debt mediation scheme (Recommendation 1.11) (see: Governance News 13/02/2019)

[Note: The Treasurer's statement does not address the recent statement by the Australian Banking Association regarding implementation of Recommendation 1.10 (amend the definition of 'small business' in the Banking Code to the definition of any business or group employing fewer than 100 full time equivalent employees, where the loan applied for is less than \$5 million). The ABA statement is covered in a separate post in this issue of Governance News.]

[Source: Treasurer Josh Frydenberg media release 01/03/2019]

The ABA 'has not yet reached a view' on whether to implement FSRC Recommendation 1.10 (amend the definition of 'small business' in the Banking Code')

The Australian Banking Association (ABA) has released a statement outlining its planned actions in response to the Financial Services Royal Commission recommendations including updating the Banking Code of Practice with 'key amendments'.

The ABA states that it will support and implement recommendations 1.8, 1.13 and 1.15. That is, the Banking Code will be amended to:

- require that banks work with customers in remote areas or who have limited English to identify ways for them to undertake their banking;
- ban informal overdrafts on basic bank accounts
- abolish dishonour fees on basic bank accounts
- require banks to follow AUSTRAC's guidance about the identification and verification of those identifying as of Aboriginal or Torres Strait Islander heritage
- end charging default interest in areas declared to be affected by drought or other natural disasters
- introduce enforceable provisions of the Code, identified and agreed with Australian Securities and Investments Commission (ASIC), backed by legislation

The statement adds that the banks will work with ASIC, the Australian Competition and Consumer Commission (ACCC) and Treasury (where necessary) to ensure these changes are made as soon as possible.

In addition to changes to the Code, the ABA also expresses support for recommendation (1.14) for clearer and improved practices for banks assisting farmers in financial distress.

Amending the definition of small business in the Code?

The ABA states however, that it has 'has not yet reached a view' on whether to implement recommendation 1.10 (amend the definition of 'small business' in the Banking Code to the definition of any business or group employing fewer than 100 full time equivalent employees, where the loan applied for is less than \$5 million).

The ABA writes that:

- **The recommended change may materially impact access to credit:** The ABA writes that 'the current Code definition of \$3m total credit exposure was reached after considerable evidence-based consideration about the likely impact on availability of credit and competition in the market.' The ABA writes that the 'the industry has serious concerns' that the Commission's recommendation 'may have a material impact on access to credit for small business borrowers.'
- **Recommended change represents a significant expansion of the current definition:** The ABA writes that the Commission's recommendation to expand the definition 'from total borrowings of a business to an assessment on a per loan basis regardless of the existing borrowings is a very significant expansion on the current definition which the industry believes should be considered carefully before any change is made'.



- **Further consultation required to enable the ABA to finalise its position:** The ABA 'believes more consideration needs to be given to the issue by regulators, the ABA and the small business community, particularly the change from Total Credit Exposure to per loan facility. Given the potential impacts, the industry believes this a prudent approach to this change'. In finalising the industry position on this recommendation, the ABA says that it will model the impact on their own customers and consult with Treasury, regulators and small business groups.

CEO of the Australian Banking Association Anna Bligh said that the updated Code would create a stronger code for customers adding that the changes would be implemented as soon as possible. She added that this work will 'build upon the new Code, approved by ASIC in July last year, which delivers a better banking experience for Australian customers'. In addition, Ms Bligh said that banks will 'also deliver greater assistance to farmers through clearer and improved practices when assisting farmers with distressed loans'.

[Source: ABA media release 27/02/2019]

The Treasurer has directed ASIC to investigate grandfathered conflicted remuneration

The Australian Securities and Investments Commission (ASIC) has been authorised — under *ASIC (Investigation into grandfathered conflicted remuneration for financial advice) Direction* — to undertake an investigation into the extent to which persons who are giving or accepting grandfathered conflicted remuneration are: a) changing their arrangements to end the payment of grandfathered conflicted remuneration prior to 1 January 2021; and b) passing the benefit of ending the payment of grandfathered conflicted remuneration on to clients, whether through direct rebates or otherwise.

The instrument commenced 1 July 2019.

[Source: Australian Securities and Investments Commission (*Investigation into Grandfathered Conflicted Remuneration for Financial Advice*) Direction 2019 21/02/2019]

Not constitutionally valid? The AIOFP has reportedly advised its members that it is prepared to challenge the constitutional validity of banning grandfathered commissions, separately the AFA has also said that any attempt to legislate a ban may lead to a constitutional issue

The Independently Owned Financial Advisers of Australia (AIOFP) which represents members of the non-aligned financial advice community, has reportedly written to its members to advise that the proposed plans to ban grandfathered commissions may not be constitutionally valid and that the association is seeking legal advice with a view to mounting a legal challenge (if necessary).

Reportedly, AIOFP noted in its letter that Bill Shorten has previously (in his role as Financial Services Minister) cast doubt on the constitutionality of banning grandfathered commissions on the ground that 'the proposal to ban particular remuneration structures can only operate prospectively, due to constitutional restrictions concerning acquisition of property'.

AIOFP executive director Peter Johnston has reportedly said that the associations action in challenging the validity of the changes will send a clear message to Canberra that that AIOFP members are prepared to lobby and litigate if necessary. 'We have had enough of politicians either not bothering to understand the nuances of our industry or considering financial advisers as easy low hanging fruit to exploit for political opportunism. At the moment, both sides are feverishly and blindly rushing to legislate against grandfathering without realising it will only give higher profits to institutions, financially disadvantage consumers and crush small business' he is quoted as saying.

Reportedly, 50% of AIOFP members are reliant on grandfathered commissions.

Separately, at the Association of Financial Advisers (AFA) has also reportedly raised concerns that any attempt to legislate a ban on grandfathered commissions may be unconstitutional. AFA general manager for policy and professionalism Phil Anderson reportedly said 'There is clearly evidence to suggest that the banning of grandfathered commissions would create a constitutional issue, yet despite all the direct evidence that we provided in our interim report submission [the Financial Services Royal Commission], the commissioner [Commissioner Kenneth Hayne] still proceeded in the final report to simply deny that it is an issue.'



[Sources: Independent Financial Adviser 01/03/2019; 05/03/2019; Your Money 01/03/2019]

In Brief | Confirming ASIC's new enforcement approach: 'ASIC's enforcement approach will have at its centre a focus on deterrence, public denunciation and punishment of wrongdoing by way of litigation' ASIC Commissioner John Price has said

[Source: Speech by Australian Securities and Investments Commission Commissioner, John Price Keynote address at Group of 100 Dinner 26/02/2019]

In Brief | ASIC's take on lessons from the Financial Services Royal Commission for the regulation of health practitioners: 'understanding how and why people have behaved, and what has enabled them to behave in this way provides some critical lessons for all regulators' ASIC states

[Source: Speech by John Price, Commissioner, Australian Securities and Investments Commission at the AHPRA - National Registration and Accreditation Scheme Combined Meeting 28/02/2019]

In Brief | Sunsuper has reportedly announced it has capped the fees payable to a financial adviser via a clients' superannuation account to combat unnecessary balance erosion. The change is consistent with both ensuring compliance with the sole purpose test and with the fund's duty to act in the best interests of members, Sunsuper head of advice and retirement Anne Fuchs is quoted as stating

[Source: Financial Standard 28/02/2019]

Insurers

In his address to the ICA Conference, Assistant Treasurer Stuart Robert outlined the government's proposed response to the Financial Services Royal Commission Recommendations as they apply to insurers

In his address to the ICA Conference, Assistant Treasurer Stuart Robert reiterated the government's commitment to implementing all 76 recommendations made by the Hayne Royal Commission and identified a number of planned government actions of specific relevance to the insurance sector.

These include implementation of the following recommendations.

- **Recommendations 1.17, 3.9, 4.12, 6.6, 6.7 and 6.8** relating to the extension of the Banking Executive Accountability Regime (BEAR) to a wider range of financial firms, including insurers
- **Recommendation 2.3 and 2.6** (review the effectiveness of measures to improve the quality of advice in three years' time). Mr Robert said that this will include a review of the remaining exemptions to the ban on conflicted remuneration, such as those for general insurance and consumer credit insurance
- **Recommendation 4.2** (relating to funeral expenses policies). Mr Robert said that the government plans to also restrict the use of the term 'insurer' and 'insurance'
- **Recommendation 4.3** (relating to the deferred sales model for add-on insurance). Mr Robert said that the government will implement the Design and Distribution Obligations (DDOs) and a Product Intervention Power (PIP) for ASIC.

[Note: *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018* is currently at second reading stage in the House of Representatives.]

- **Recommendation 4.1** (prohibiting the hawking of insurance). Mr Robert said that the definition of hawking will be clarified to include selling of a financial product during a meeting, call or other contact initiated to discuss an unrelated financial product
- **Recommendation 4.5** (duty to take reasonable care not to make a misrepresentation to an insurer). Mr Robert said the Government has agreed to amend the duty of disclosure for consumers in the *Insurance Contracts Act 1984* (Cth) (Insurance Contracts Act) to ensure disclosure obligations do not enable insurers to unduly reject the payment of legitimate claims



- **Recommendation 4.6** (avoidance of insurance contracts). The Government plans to amend the Insurance Contracts Act to ensure insurers only avoid a life insurance contract on the basis of non-disclosure or misrepresentation if it can show that it would not have entered into a contract on any terms
- **Recommendation 4.7** (application of unfair contract terms to insurance contracts). The Government plans to introduce legislation in accordance with the recommendation, including defining the main subject matter exception in the law as outlined by Commissioner Hayne. Mr Robert said that consultation with industry on this policy occurred between June and August 2018.

[Note: This appears to be a reference to proposal paper: *Extending Unfair Contract Terms Protections to Insurance Contracts* which outlined a model to extend unfair contract term (UCT) provisions to insurance contracts regulated under the Insurance Contracts Act 1984 (Cth). See: Governance News 02/07/2018]

- **Recommendation 4.8** (removal of the insurance claims handling exemption). Mr Robert said that government will release a consultation paper on removing the exclusion of insurance claims handling from the definition of 'financial service'.

[The consultation paper was released on 1 March and is discussed in more detail in a separate post in this issue of Governance News.]

- **Compensation scheme of last resort.** The Government has committed to establish an industry-funded, forward-looking compensation scheme of last resort, as part of its response to the Royal Commission.
- **Improving disclosure (use of standard definitions):** The government plans to release a discussion paper on improving disclosure in the general insurance sector. Some of the issues the paper has identified for discussion include: the effectiveness of the standard cover regime; standardising the definition of key terms; and reviewing the utility of key fact sheets. Mr Robert said that though it may 'appear that simply increasing the use of standard definitions could improve consumer awareness and their ability to compare policies...there are challenges in developing standard definitions' and for this reason, consultation is necessary. In addition, he said that the government will have regard to any recommendations relating to disclosure from the Financial Services Royal Commission and the recommendations in the First Interim Report of the Australian Competition and Consumer Commission's Northern Australia Insurance Inquiry before developing regulatory proposals and identifying the actions industry can also take. The Government will then prepare a proposed model for regulatory intervention and identify any further action that industry can take to improve disclosure.

[Sources: Assistant Treasurer Stuart Robert Address to the Insurance Council Conference – National Conference 27/02/2019]

Consultation on government's proposed approach to implementing FSRC recommendation 4.8: the exclusion of insurance claims handling from the definition of 'financial service' (for both life and general insurance products)

The government has issued a consultation paper seeking feedback on its proposed approach to implementing Financial Services Royal Commission recommendation 4.8, the exclusion of insurance claims handling from the definition of 'financial service' (for both life and general insurance products).

In putting forward the proposal, Assistant Treasurer Stuart Robert said that the government acknowledges industry concerns that the proposed removal of the exemption could have unintended consequences and as such, seeks stakeholder views on the underlying issues and the proposed approach.

Some Key Points

Proposed approach: A 'two-pronged approach' to implementing the recommendation is proposed.

1. Entirely remove the insurance claims handling exemption, by removing Regulation 7.1.33 from the *Corporations Regulations 2001 (Cth)*
2. Use existing legislative powers to define the activity of handling or settling an insurance claim as a 'financial service' for the purposes of the *Corporations Act 2001 (Cth)*. Treasury suggests that the definition could be enacted in primary legislation or regulations using a variety of provisions.

This measure is intended to address concerns that:

- removal of the exemption will lead to uncertainty as to which activities carried on by an insurer in relation to claims handling are regulated, given that many of the activities in question are unlikely to meet the current definitions of providing a financial service
- removal of the exemption would trigger a number of requirements under the *Corporations Act 2001 (Cth)* that would apply to AFS licensees where they provide financial advice in the course of handling or settling an insurance claim. The consultation paper states that while the application of some of these requirements is 'clearly part of achieving the broader consumer protection objective, some requirements could be difficult to apply or could impose a heavy compliance burden on either insurers or third parties who may be involved in insurance claims handling, the cost of which would ultimately fall on consumers but without providing significant benefits to them'.

Proposed definition?

The consultation paper states that though the precise definition would need to be further developed, 'handling or settling of an insurance claim' could be defined to cover all conduct of the insurer (or its representatives) in relation to claims handling, including ways in which insurers: make a decision about a claim (investigating claims and interpreting policy provisions); conduct negotiations in respect of settlement amounts; prepare estimates of loss or damage or likely repair costs; and make recommendations about mitigation of loss.

Application to insurance products: Consistent with the recommendation of the Financial Services Royal Commission, the proposal would apply to all insurance products including general insurance products, life risk products and investment life insurance products and group life insurance products.

Commenting on the proposed reform at the ICA Conference (covered separately in this issue of Governance News) Assistant Treasurer Stuart Robert said that the government supports the regulation of insurance claims handling as a financial service under the *Corporation Act 2001 (Cth)* noting that it will allow the Australian Securities and Investments Commission (ASIC) to enforce a higher standard of behaviour in the industry and also ensure consumers can expect the same standard from insurers handling claims as they can from all financial service providers.

Timeline: The deadline for submissions is 29 March.

[Sources: Treasury media release 01/03/2019; Consultation paper: Insurance Claims Handling Taking action on recommendation 4.8 of the Banking, Superannuation & Financial Services Royal Commission 01/03/2019; Assistant Treasurer Stuart Robert Address to the Insurance Council Conference – National Conference 27/02/2019]

No surprises for insurers in the FSRC recommendations? APRA Deputy Chair John Lonsdale has called on insurers to take the opportunity to proactively address concerns about products/services, advised (those who have not already done so) to undertake self-assessments and flagged that the sector can expect APRA to be 'less patient'


In his speech to the Insurance Council of Australia (ICA) Annual Forum, Australian Prudential Regulation Authority (APRA) Deputy Chair John Lonsdale reflected on the impact of the Financial Services Royal Commission recommendations for the insurance sector and outlined some of APRA's planned actions in response. He also cautioned companies to expect a change in APRA's enforcement approach. Finally he called on industry to 'show greater leadership in responding to concerns about products or services' emphasising that in order to rebuilt lost trust, 'ultimately individual companies must make conscious decisions to do the right thing, even when not strictly required by law'.

Some Key Points

- **Legitimate criticisms of the sector:** Mr Lonsdale said that in APRA's experience, the general insurance sector is 'generally mature, well-run, soundly capitalised and responds promptly and effectively to regulatory principles and requirements' but that despite this, the Hayne report 'made several legitimate criticisms about general insurance that lend support to the overarching theme delivered in his interim report: that misconduct across the financial sector has been primarily driven by

greed, and the pursuit of short-term profit at the expense of basic standards of honesty and ethical behaviour'.

- **No surprises in the recommendations?** Mr Lonsdale said that many of the issues identified over the course of the commission were already known to industry. 'Is anyone in this room surprised that the Royal Commission team zeroed in on the sale of add-on insurance sold through car dealerships? The industry has been aware of serious concerns around the sale of add-on products, including consumer credit insurance, for many years' he asked.
- **Price of inaction:**
 - **Reputational damage and financial costs:** Mr Lonsdale said that the industry's failure to act is ultimately likely to be more costly than the alternative. 'The evidence that emerged from the Royal Commission showed that in multiple areas of exposure – add-on insurance, unfair contract terms, conflicted commissions and questionable sales practices – insurers left themselves vulnerable by failing to mitigate against risks that, in many instances, were well known. The industry reaped the short-term profits of these decisions through higher premiums charged, more policies sold and fewer claims paid out to policyholders. Now it's counting the costs, and they are almost certainly going to be greater than would have been the case had the industry taken adequate steps to mitigate these risks on its own'.
 - **Decisions taken out of insurer's hands:** 'Ultimately...the industry's reluctance to address fully the problems such as add-on insurance means that some issues have been taken out of insurers' hand'. Mr Lonsdale said that as a result of industry's inaction, a deferred sales model will be imposed and ASIC will impose a cap on commissions. Likewise, he said that insurers now have less ability to control the process of change on significant issues including consumers' duty of disclosure, making insurance policies subject to unfair contract terms laws and the review of the exemption to the ban on conflicted commissions. He said that insurers 'have lost that control because the community has lost trust in the industry's ability to self-regulate in a manner that adequately protects policyholders'.
- **Industry has an opportunity to 'show greater leadership' in addressing concerns about products/services:** Mr Lonsdale 'challenged' the general insurance industry to 'show greater leadership in responding to concerns about products or services, rather than being dragged into action by regulators, politicians or Royal Commissions. This means being prepared to go beyond just legal or regulatory compliance. The ICA and a strengthened Code of Practice can assist, but ultimately individual companies must make conscious decisions to do the right thing, even when not strictly required by law' he said.
- **APRA to 'more forcefully address misconduct':** Mr Lonsdale said that though the review of APRA's enforcement approach and capabilities is not yet complete, 'it is likely to recommend an increased enforcement appetite, which will mean industry can expect an APRA that is less patient on the time taken by uncooperative entities to remediate issues, more forceful in expressing specific expectations, and prepared to set examples using public enforcement to achieve general deterrence'.
- **APRA is focused on culture:** Mr Lonsdale said that as the prudential regulator, 'APRA's key focus is that insurers retain sufficient financial strength to pay all legitimate claims from policyholders' and observed that by making substantial profits through the sale of add-on insurance, insurers have arguably bolstered their prudential strength (notwithstanding the \$128 million-plus the industry has had to remediate to customers since 2010). However, he went on to say that the 'Financial Services Royal Commission suggests that the basic principle of insurance – utmost good faith – has not always been adhered to' which has resulted in an 'undermining of trust'. This, he said 'is very much a prudential issue and, appropriately, a matter of concern for APRA. The Royal Commission has therefore encouraged us to do much more in examining culture within financial institutions, and what drives it'. He said that APRA's supervisors will 'continue to closely monitor and engage with insurers to ensure they retain sufficient capital strength and profitability, and that risk management frameworks are updated and embedded, as the industry adjusts to the new environment'.
- **High-level insights into self-assessments:** Last year APRA asked 36 of the largest APRA regulated entities to undertake a self-assessment to gauge whether similar issues to those highlighted in the CBA report [Prudential Inquiry into the CBA] might exist in their institutions. Nine of the institutions were larger



insurers. He said that though not yet in a position to provide detailed feedback on how these insurers performed, he could provide some high level insights including some 'common themes'. These include:

- 'the management of non-financial risks in the sector is less mature than for financial risks, and culture is an area of challenge that isn't particularly well understood'
 - 'remuneration frameworks and assessments also need to be further developed and embedded to better reflect risk and customer outcomes' and to take into account observations in APRA's 2018 information paper on remuneration practices at large financial institutions
 - where insurers have identified weaknesses, most have developed remediation plans, some of which incorporate a significant number of actions. Our focus is on whether institutions have properly identified the root causes – the "why" and "how", rather than the "what". Insurers 'can expect APRA supervisors to focus strongly on challenging boards and management on root cause identification in the months ahead'.
- **Advisable for insurers who have not yet done so to conduct a self-assessment:** Noting that some insurers have already opted to voluntarily conduct self assessment, he added that APRA intends to publish an information paper providing broad feedback from the self-assessments in Q2 2019, and will also contact participants to provide entity-specific feedback. Mr Lonsdale also encouraged insurers who have not yet (voluntarily) completed a self assessment to do so as 'our supervisors are likely to ask you over coming months what steps you have taken to respond to the issues raised by the CBA report'. Mr Lonsdale said that conducting the self-assessment 'can help you pinpoint and deal with the issues at the heart of any problems facing your business, which is an essential step in rebuilding the trust of wary policyholders and a jaded community'.
- **ARPA priorities** for the sector identified by Mr Lonsdale include (in addition to the extension of BEAR, and a focus on customer outcomes) the following.
- APRA expects to release a revised prudential standard on remuneration for consultation 'around the middle of the year', which will focus on better alignment of remuneration with prudent risk management outcomes and long-term institutional soundness. It will also have regard to measures designed to reduce the risk of misconduct.
 - Work is continuing on the development of our formal prudential framework for recovery and resolution. We have been working with a group of large and medium insurers to build their recovery planning capability to ensure they are better prepared to recover from a range of stress scenarios. Consultation on the prudential framework that will provide a formal foundation for this work will start over the next year.
 - APRA is reviewing the implications for the capital framework of the forthcoming accounting standard AASB17 – Insurance Contracts. APRA's preference is to align capital treatment with accounting standards, unless departure is justified on prudential grounds. Implementation of this standard is expected to be complex, with most or all of the relevant capital standards likely to be amended. APRA's plans to release a discussion paper 'towards the end of the year'.


[Sources: APRA Deputy Chair John Lonsdale Speech to the Insurance Council of Australia 2019 Annual Forum: After the storm: rebuilding trust in the wake of the royal commission 27/02/2019; [registration required] The Australian 27/02/2019]

Suggested steps for general insurers to take now: ASIC Commissioner Sean Hughes has encouraged insurers to proactively implement the Financial Services Royal Commission's recommendations

In his keynote address at the Insurance Council of Australia (ICA) Annual Forum 2019, ASIC Commissioner Sean Hughes outlined the implications of the findings and recommendations of the Financial Services Royal Commission final recommendations for general insurers and identified ASIC's priorities. 'While the work that lies ahead may seem challenging, it is an effort that must be made. It is important to remember that these changes have one critical purpose – to rebuild community trust. And we all have a part to play' he said.


Some Key Points

- **Circumstances that led to the Royal Commission:** Mr Hughes said that 'unjustly poor consumer experience' led to the need for a Royal Commission. 'I think we can all point to instances in our careers



where adverse consumer feedback or complaints have been treated as of no more than "nuisance value" and just a cost of doing business. We need to move the dial from this being just a compliance tick-box exercise, to one where meeting consumer expectations is what we aspire to do, each and every day' he said.

- **Suggested steps for insurers to take to respond to Hayne Commission recommendations:** Mr Hughes called on insurers to make changes to improve consumer outcomes (without waiting for legislative change) 'to drive a minimalist legal compliance approach'. 'We encourage you as an industry to aim high. And when you think you've got there, aim higher still. Aim to exceed, rather than meet community expectations' he said. More particularly he encouraged insurers to:
 - review disclosure documents to ensure they 'work for insurers';
 - 'be clear, to the public and your staff, about who your products are intended for and who they do not suit. If you know that one of your products does not cover particular groups of people, say this';
 - match the distribution of products to the intended market for those products
 - review incentives to ensure they are not incentivising misspelling of products
 - undertake regular reviews of product claim ratios and other value metrics
 - keep consumer outcomes in mind at all times by asking: 'Does this product offer real value? Will the intended consumer benefit from this product? How straightforward is a successful claim?'
 - be proactive in addressing known issues and identifying new ones (eg look at withdrawn claims and complaints) and consider whether, or how, products or sales practices need to change
- **Focus areas for ASIC in 2019**
 - **In 2019, ASIC will have a greater focus on court-based outcomes** 'to provide strong public denunciation and punishment of wrongdoing' Mr Hughes said. He went on to say that though ASIC recognises that in some cases regulatory actions may be 'a better targeted and appropriate response —and we certainly cannot litigate all the breaches and reports of misconduct we receive— general and specific deterrence require the sanction of a court'.
 - **Close cooperation with ARPA:** Mr Hughes said that 'APRA Member Summerhayes and I are both committed to ensuring that we work collaboratively in discharging the twin peaks regulators' approach to the insurance sector, while recognising we each have unique responsibilities and approaches'.
 - **Close and continuous monitoring:**
 - **Breach reporting:** The initial focus of ASIC's close and continuous monitoring program has been on breach reporting, and ASIC has seen a 75% increase in breach reports in the first half of the 2018-2019 financial year (as compared with the same period last year). Mr Hughes said that ASIC is of the view that organisations should focus on: improving their ability and speed in identifying and investigating breaches; maintaining a culture which prioritises consumer remediation and breach reporting; and using any incidents identified to prevent similar incidents in the future.
 - **Internal dispute resolution processes:** Commencing in November 2018, a specialist ASIC team is conducting onsite monitoring of the internal dispute resolution functions at NAB, CBA, Westpac and ANZ, as well as AMP with a focus on reviewing and assessing processes, practices, resourcing, communications, governance and reporting as well as systems capabilities.
 - **Corporate Governance Taskforce — report on government practices planned for release in Q3 2019:** The Corporate Governance Taskforce is conducting a review of a selection of ASX 100 entities to closely observe governance practices across a spectrum of large listed companies. The Taskforce initially has two key areas of focus: a) the role of the board and officers in the oversight (and in the case of officers, the management) of non-financial risk; and b) the role that conduct plays in decisions about the granting and vesting of variable remuneration for executives. ASIC plans to



publish a report in Q3 2019 highlighting practices that require improvement as well as those which represent good practice. 'While many firms promote their governance policies and frameworks, very little is disclosed about a firm's actual governance practices or how it makes decisions about, for example, vesting of variable remuneration. We strongly believe that providing some transparency about actual practices as well as ASIC's recommendations on how those practices could be improved will help to lift governance standards' Mr Hughes said.

- **Consumer credit insurance (CCI):** Inappropriate sales of consumer credit insurance (CCI) will continue to be an area of focus for ASIC Mr Hughes said. He observed that it is 'disappointing' that ASIC's 'recommendations in 2011 were not universally adopted' and that misspelling of CCI continues to be 'widespread'. Mr Hughes said that ASIC is working with lenders and insurers on appropriate remediation and is also considering regulatory options. He added that ASIC looks forward to working with stakeholders on the government's proposal to mandate a deferred sales model for all add-on insurance products and that ASIC will issue a report on its work in relation to CCI later in the year.

[Note: This appears to be a reference to [Report 256 Consumer Credit Insurance: A review of sales practices by authorised deposit taking institutions](#). The review identified the following risks: a) consumers not being made aware that they have purchased CCI or that CCI is optional; b) consumers not being asked whether or not they wish to purchase CCI; c) consumers not being eligible to claim on all components of the CCI policy they have purchased; d) the potential for consumers to be pressured or harassed by sales staff; and e) consumers not understanding the cost or the duration of the CCI policy.]

- **Fraud investigation practices:** ASIC is continuing to review how insurers investigate claims that are suspected of being fraudulent and expects to issue a report later in the year. The data collected to date indicates that over 70% of claims being investigated are found to be valid and then paid, only 4% of investigated claims are declined due to fraud, almost 15% of investigated claims are withdrawn, increasing to 45% for claims that take more than 360 days to be resolved. 'We expect firms should ensure that the investigation process does not wear consumers down to the point of abandoning legitimate claims' Mr Hughes said. He added that so far, the research indicates that consumers say that they are 'just not believed'. Mr Hughes observed that 'there must be a better way to validate a claim. Insurers should have investigation processes that are fair and reasonable and do not rely on consumers seeking robust and expensive legal representation or being so worn down by the process that they abandon their claim'. He went on to say that ASIC considers the revised provisions in the General Insurance Code of Practice (Code) as a welcome 'first step' in addressing this issue and flagged that ASIC will continue to engage with the ICA to ensure standards are appropriate.
- **General Insurance Code of Practice:** On the review of the Code more broadly, ASIC has provided comment and feedback as part of the ICA's stakeholder engagement. Several of our recommendations have been adopted in the draft Code. We note the recommendation from the Royal Commission for Codes to include 'enforceable provisions'. We will be working with Government and industry to implement this recommendation. In the meantime, we encourage the ICA to continue the work on the current review and implement the proposed update Code.

[Note: The [Review of the General Insurance Code of Practice](#) commenced in February 2017. A Code Review Final Report was released on June 26, 2018. The recommendations of the Final Report will be incorporated in a new General Insurance Code of Practice and according to the Insurance Council of Australia website, drafting of the new Code is underway. See: [Insurance Council of Australia website](#)]

[Source: The Financial Services Royal Commission and other emerging issues relating to the general insurance industry from an ASIC perspective, Keynote address by ASIC Commissioner Sean Hughes at the Insurance Council of Australia Annual Forum 2019 27/02/2019]

Other Developments

ASIC's latest report on its assessment of licensing and professional registration applications shows that less than half of the 2,879 applications considered during July 2017 to June 2018 were approved

ASIC Report 611 Overview of licensing and professional registration applications: July 2017 to June 2018 (REP 611)



The Australian Securities and Investments Commission (ASIC) has released its latest report on its activity and oversight in relation to applications for Australian financial services (AFS) licences, Australian credit licences (ACL), liquidator registrations, company auditor and approved SMSF auditor registrations, financial markets, clearing and settlement (CS) facilities, and derivative trade repositories for the period from 1 July 2017 to 30 June 2018.

ASIC Executive Director, Assessment & Intelligence Warren Day encouraged prospective applicants, and licensees 'intending to apply for variations, to review the report to better inform their applications and understand the regulatory context when applying'.

Some Key Points

- ASIC considered approximately 2,879 applications during the period. 60% of these related to AFS licence applications, 29% related to ACL applications and the remaining 11% related to professional auditor registrations
- 48% of all applications received (2,879 applications) were approved
- Of the 1,383 approvals, 44% cent were AFS licence approvals and 52% were credit licence approvals. 62% of approved applications were approved in a form other than applied for by the applicant
- ASIC assessed 329 applications for professional registration of auditors, of which 59% were approved (comprising 4% of all approvals)
- About 202 applications were withdrawn, 196 were rejected for lodgement, and 561 were carried over into the current financial year. ASIC also refused 11 applications. The regulator said it expects this refusal number would have been much higher if fewer applications had been withdrawn
- During the same period, 12 AFSLs were suspended and 191 were cancelled

[Sources: ASIC media release 28/02/2019; Report 611 Overview of licensing and professional registration applications: July 2017 to June 2018 28/02/2019; Financial Standard 01/03/2019]

In Brief | The Australian reports that Treasurer Josh Frydenberg has requested APRA consider whether it has 'appropriate powers' to ensure union appointed superannuation trustees do not pursue political objectives at the expense of members' best interests

[Source: [registration required] The Australian 04/03/2019]

Accounting and Audit

United Kingdom | The FRC has proposed changes to the going concern standard for auditors for consultation. The aim of the reforms is to raise audit quality

The Financial Reporting Council has released proposed revisions to its current standard on going concern (ISA UK 570) for consultation. In announcing the consultation FRC Acting Executive Director of Audit and Actuarial Regulation Mike Suffield said: 'Recent corporate failures and the FRC's own enforcement work has shown the existing Going Standard needs to be strengthened. If the UK is to attract high-quality global investment, investors have to have confidence in audited financial statements and the prospects of businesses. Our proposals will significantly expand the work required of auditors – however, we believe this to be an important investment in the quality of the work that underpins what is a cornerstone of audit. This revised standard has been designed to better meet the needs of users and protects the public interest.'

Proposed changes

- auditors required to make greater effort to 'more robustly challenge' management's assessment of going concern, thoroughly test the adequacy of the supporting evidence, evaluate the risk of management bias, and make greater use of the viability statement
- improved transparency with a new reporting requirement for the auditor to provide a conclusion on whether management's assessment is appropriate, and to set out the work they have done in this respect



- 'a stand back requirement' to consider all of the evidence obtained, whether corroborative or contradictory, when the auditor draws their conclusions on going concern.

Timeline: Submissions are due by Friday 14 June 2019.

[Sources: FRC media release 04/03/2019; Exposure draft and consultation document]

United Kingdom | The FRC has issued a position paper setting out next steps for the post implementation review of the 2016 auditing and ethical standards. The paper outlines how the FRC's work on the standards responds to certain recommendations made by the Kingman Review, how proposals are being developed to support the Competition and Market Authority's Market Study of the UK Statutory Audit Market; and how revisions made to the international Code of Ethics will be incorporated into the FRC Ethical Standard. The paper also includes comments on the changes that will take place to UK law in the event that the UK exits the European Union with no deal or transitional period at 11pm on 29 March 2019

[Sources: FRC media release 05/03/2019; Position Paper: Post Implementation Review of the 2016 Auditing and Ethical Standards - Next Steps]

In Brief | The AFR reports that ASIC is considering whether it should publicly name accounting firms whose audit quality falls below benchmarks as part of its new regulatory approach. Reportedly, ASIC has said it will consult widely on any changes, including with accounting firms and audit oversight body the Financial Reporting Council (FRC)

[Source: [registration required] The AFR 05/03/2019]

In Brief | Shadow Treasurer Chris Bowen has reportedly said that if elected, the Federal Labor party will extend the AML/CTF rules to accountants, lawyers and real-estate agents

[Source: [registration required] The AFR 24/02/2019]

Risk Management

Top Story | The implications of new Whistleblower laws for industry

MinterEllison Partner, Gordon Williams has released an article outlining the implications of *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018* (Act) for industry. The full text of the article is available on the MinterEllison website here: <https://www.minterellison.com/articles/new-whistleblower-laws-to-take-effect-soon>

[Note: The recently released fourth edition of the ASX Corporate Governance Principles and Recommendations (covered in a separate post in this issue of Governance News) also include a new requirement for companies to have and to disclose a whistleblower policy (Recommendation 3.3). The fourth edition was released on 27 February 2019 and takes effect for a listed entity's first full financial year commencing on or after 1 January 2020.]

[Source: HR&IR Update: New whistleblower laws to take effect soon 28/02/2019]

In Brief | The NSW ombudsman's annual report on whistleblower legislation has identified cases where managers in the NSW public sector are suffering from 'blind spots' about whistleblowers and instances in which they 'failed to appreciate that their actions may be perceived as a reprisal' against whistleblowers. The report identifies a range of actions that public authorities, the ombudsman's office and the government can take to help managers ensure they make appropriate decisions

[Sources: Oversight of the Public Interest Disclosures Act 1994: Annual Report 2017-2018 28/02/2019; Government News 03/04/2019]

In Brief | According to media reports a former National Australia Bank executive is expected to be charged with more than 50 offences relating to an alleged \$40 million fraud, after handing herself in to police following a whistleblower report. NAB has issued a statement in response, stating that the bank is cooperating with the investigation and stating that it is 'the victim in this matter. Police have



confirmed that no one at NAB is under investigation...and there is no suggestion of any wrongdoing by anyone at NAB'

[Sources: NAB media release 05/03/2019; The New Daily 05/03/2019; [registration required] The AFR 05/03/2019; The Guardian 05/03/2019]