Governance News

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Key Takeouts

Overall progress towards gender equality has stalled: The index is based on performance across ten indicators including educational attainment, labour-market attachment, pay and representation in senior jobs. Progress on many of these measures including pay, seniority and the decision to enter the workforce at all, remain 'relatively stable'.

Nordic countries continue to rank most strongly on the index. This is attributed by the Economist to mandatory quotas for women on boards, 'better' parental leave systems and more flexible working conditions.

Australian is ranked 17th in the index above New Zealand (ranked 18), the United States (ranked 20) and Britain (ranked 24). Australia also ranked slightly above the OECD average on most measures. However, costs of child care, and paid maternity/paternity leave rank less strongly.

According to the Economist's latest glass ceiling index, which measures where women have the best chance of equal treatment at work, progress for women in the workplace has stalled in recent years. An overview of some of the key findings overall, as well as a summary of the findings with respect to Australia is below.

Results overall: some key points

- **Progress on many measures has stalled:** The index is based on performance across ten indicators including educational attainment, labour-market attachment, pay and representation in senior jobs. Progress on many of these measures including pay, seniority and the decision to enter the workforce at all, remain 'relatively stable'.
  - The gender pay gap (which measures the difference between what a typical woman and man earn), is largely unchanged from last year at around 14%
  - The proportion of women on company boards (23%), has slightly increased, but the proportion of women in management has 'barely budged'
  - The female participation rate in the labour force has increased slightly (to 64%) but this is still 16 percentage points below the male average
- **Nordic countries rank most strongly:** The countries ranked best in the latest index are those that tended to rank strongly in previous years. The Nordic countries (Sweden (ranked 1), Norway (ranked 2), Iceland (ranked 3) Finland (ranked 4)) are 'particularly good' at getting women to complete a degree (approximately 50% have a degree, in Sweden women's tertiary education attainment rate is 13.1% higher than men's) and secure a job (some 75% are in the labour force). They also have a large share of women in senior positions; in Sweden and Norway the figure is around 40%. This is attributed by the Economist to mandatory quotas for women on boards, 'better' parental leave systems and more flexible working conditions.
- **South Korea and Japan ranked less strongly:** The OECD countries with the greatest challenges for working women were identified as South Korea (ranked 29 – the last in the index), and Japan (28 – second to last). According to the Economist, in South Korea the gender pay gap is 35% (in Japan it is 25%); the labour force participate rate is 59% (as compared with 79% for men); and boards of directors at publicly traded South Korean firms are 98% male. While paternity leave is generous, uptake is still low. The lack of progress is attributed by the Economist to 'cultural and societal norms' — there is an expectation that women choose between family and work and women carry responsibility for the majority of the domestic work — which the researchers identify as a 'decisive influence on gender equality at work'.

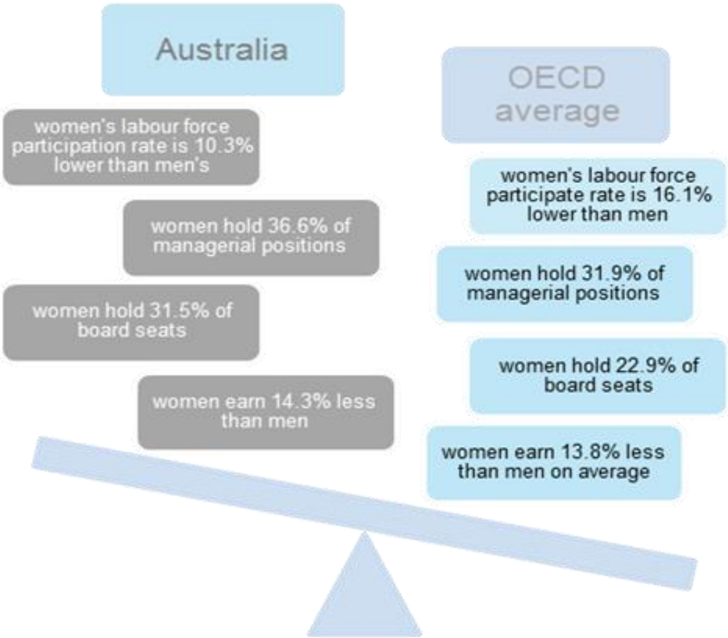
- **Where does Australia rank?** Australian was ranked 17th in the index above New Zealand (ranked 18), the United States (ranked 20) and Britain (ranked 24). Australia also ranked slightly above the OECD average on most measures.

Comparison: Australia vs OECD average

Overall Australia ranks slightly ahead of the OECD average on most measures. However, costs of child care, and paid maternity/paternity leave rank less strongly.

- **Gender Pay Gap:** In Australia, women earn 14.3% less than men. By comparison, in the OECD women earn 13.8% less than men on average

- **Female board representation:** In Australia, women hold 31.5% of board seats. The OECD average is 22.9%



- **Female representation in managerial roles:** In Australia, women hold 36.6% of managerial positions as compared with the OECD average of 31.9%.

- **Female political representation**: In Australia, women hold 28.7% of seats in parliament. By comparison, the OECD average is 26.6%

- **Female labour force participation:** In Australia, women's labour force participation rate is 10.3% lower than men's. By comparison, the OECD average female labour force participate rate is 16.1% lower than men's

- **Tertiary education:** women's tertiary education attainment rate is 9.7% higher than men's. By comparison, the OECD average for women's tertiary education attainment is 6.2% higher than men's

Room for improvement? Paid maternity/paternity leave and cost of child care

- In Australia, women receive the equivalent of 7.6 weeks of paid maternity leave (as compared to the OECD average of 32.5 weeks).

- Australian men receive the equivalent of 0.8 weeks of paid paternity leave (the OECD average is 4.6 weeks paid paternity leave).

- Net child-care costs are 37.6% of the average wage in Australia. By comparison, the OECD average is 16.4% of the average wage.

[Note: These statistics appear to be less detailed than those released by The Workplace Gender Equality Agency (WGEA). With respect to female representation in leadership roles WGEA data results from the Agency's 2017-18 dataset shows: women hold 13.7% of chair positions and 25.8% of directorships, and represent 17.1% of CEOs and 30.5% of key management personnel (WGEA 2019, Data Explorer). According to the WGEA 'real-time' statistics from the Australian Institute of Company Directors reveals: 29.7% of directors in the ASX 200 are women (December 2018) (AICD, 2019). Women comprised 45.4% of new appointments to ASX 200 boards in 2018 (AICD, 2019). See: WGEA Gender workplace statistics at a glance 2017-18 21/02/2019]

[Source: [registration required] The Economist 'glass ceiling index' 08/03/2019]

ACSI marked international women's day 2019 by launching a new 'tougher' gender diversity policy with broader application (it will apply to ASX 300 boards)

The Australian Council of Superannuation Investors (ACSI) marked International Women’s Day 2019 by launching an updated gender diversity policy, aimed at increasing the appointment of women to corporate boards.

Rationale: 'Our approach to board gender diversity in listed companies is based on the belief that boards should be comprised of individuals who are able to work together effectively, and who bring diversity of thought to board decision making, to build and maintain a viable, profitable and efficient company over the long-term. In pursuit of these aims, our members have endorsed a gender diversity target, and expect that at least 30% of the board positions in ASX listed companies be occupied by women' ACSI states.

New gender diversity voting policy

- For ASX200 boards with one or zero women directors, ACSI will recommend a vote against at least one of the following (in descending order): a) the Chair of the board; b) the Chair of the Nominations Committee; c) a member of the Nominations Committee or; d) the longest-serving director seeking re-election.
- Where a company has zero women directors, ACSI may also make recommendations to vote against any newly-appointed male directors.
- In 2019, we have broadened this policy to include boards with no gender diversity in the ASX300. New entrants to the ASX300 will be given one year before we apply our policy.
- ACSI writes that recommendations will be made on a case by case basis.

Commenting on the revised policy, ACSI CEO Louise Davidson said, 'We have applied our gender diversity voting policy with great effect to reduce the number of zero women boards in the ASX200, until only a handful of recalcitrants remain. Now, for the first time, we will extend our policy to ASX200 boards with one woman director and to ASX201–300 boards. ACSI members have endorsed the new policy and are committed to supporting its implementation by exercising their votes at companies’ AGMs.'

Explaining ACSI’s decision to extend the policy to companies with one woman director, Davidson said: 'Having one woman director does not represent job done. These companies will continue to attract investor scrutiny until a reasonable gender balance is achieved'.

Seeking to engage with companies on the issue: ACSI's statement adds that 'as always, our voting recommendations will be combined with direct company engagement' and noted that ACSI will write to ASX 300 boards with 'poor gender diversity' to request meetings. We are writing to all ASX300 boards with poor gender diversity to request a meeting. We want to give these companies an opportunity to outline their plans to improve board gender diversity, before we decide how to recommend on their next round of director elections. However, Ms Davidson is quoted as stating that companies are unlikely to be exempted from the policy: 'The case for improving board gender diversity is well established. Companies without any women directors are not just out of touch with community and investor expectations, they’re out of step with their peers. We do not accept that companies can’t find appropriately skilled, experienced and capable women for directorships. The time for excuses is over, we want action.'

[Note: The recently revised ASX Corporate Governance Principles and Recommendations include a new requirement for listed entities to have and 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. See: Governance News 04/03/2019.]

[Sources: ACSI media release 07/03/2019; ACSI gender diversity policy]

Why not 40/40/20? Reportedly ASX board member Carol Schwartz has questioned whether the 30% gender diversity objective is enough of a 'stretch' target, arguing that the recently revised ASX Corporate Governance Principles could have gone further

Reportedly Reserve Bank Board Member Carol Schwartz has criticised the 30% female representation target in the recently revised ASX Corporate Governance Principles and Recommendations on the basis that it does not go far enough to drive change. 'They [boards] are already at 29.7%, where is the reach? Where is the stretch?' Ms Schwartz is quoted as saying. Reportedly, Ms Schwartz advocates the use of the '40/40/20' approach, which targets 40% women, 40% men, and 20% of seats unreserved.

[Note: The fourth edition of the ASX Corporate Governance Principles and Recommendations was released on 27 February. 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. See: Governance News 04/03/2019.]

Reportedly, Ms Schwartz was also critical of lobby group, the 30% club (which aims for 30% female representation on ASX 200 boards), on similar grounds questioning 'Why would you call yourself a 30 per cent club? When you are at 30 per cent you can say "Phew we have done it"…I think potentially it is a missed opportunity, why wouldn't you go for 40/40/20?'.

[Source: [registration required] The Canberra Times 08/03/2019]

Former foreign minister Julie Bishop has reportedly endorsed calls for companies bidding for a share of the federal government's $50 billion annual procurement spend to be required to meet gender equality targets

Former foreign minister Julie Bishop has reportedly endorsed calls for companies bidding for a share of the federal government's $50 billion annual procurement spend to be required to meet gender equality targets. Reportedly Ms Bishop suggested that criteria about gender equality and female participation could be added to contract terms for taxpayer-funded spending and that federal government departments and agencies could be required to report the data publicly.

'I certainly think it's an issue that should be taken into consideration when you look at a government tender and the various criteria that are required, I think gender equality is a benchmark that ought be considered' Ms Bishop is quoted as stating.

[Source: [registration required] The AFR 08/03/2019]

In Brief | The SMH reports that NSW Labor leader Michael Daley has said that 50% of all government related board and committee positions will go to women if Labor wins the upcoming state election. Currently, Mr Daley said, women old 40% positions on about 400 public boards and committees in NSW

[Source: [registration required] The SMH 08/03/2019]

In Brief | (Gender) diversity is key to lifting standards in the finance sector? Managing Director of Fidelity International Alva Devoy has called on the finance sector to improve its own gender balance in the wake of the Hayne Commission's recommendations as she considers that the current imbalance 'has skewed the industry's thinking and the belief system'. Reportedly Ms Devoy has said that though the change will be 'disruptive, it will be a good shift because it is in the client interest'

[Source: [registration required] The Australian 08/03/2019]

In Brief | 'Outsiders need not apply'? More women on boards won't necessarily deliver diversity benefits (such as countering group think) unless they're drawn from a different network than their male counterparts. To deliver benefits, companies need to take a broader approach to board diversity that aims to get multiple viewpoints into corporate decision-making according to The Conversation

[Source: The Conversation 07/03/2019]

Remuneration

United States | US financial regulators are reportedly considering reviving and Obama administration era rule to cap bankers' pay

The WSJ reports that US banking regulators (Federal Deposit Insurance Corp, Office of the Comptroller of the Currency and the Federal Reserve) are considering reviving a proposal to implement the incentive compensation rule, which would require big banks to defer some compensation for executives and to claw back bonuses.

The rule is required by the *Dodd-Frank Act 2010*, which mandated new rules to limit executive payouts and to more closely align them to firms' long-term financial health. Reportedly, though the incentive compensation rule was twice proposed during the Obama administration, it was never completed, partly due to industry pushback and partly due, The WSJ suggests, to the failure of the financial regulators to reach agreement on the appropriate scope.

Reportedly, industry opposed the scope of the latest proposal from 2016 — which proposed to extend the application of the rule to employees — on the basis that it should be limited to top executives. However, some banks have reportedly indicated their willingness to accept a version of the rule (should it be put forward) on the basis that they believe the scope is likely to be narrower now than under a (possible) future Democrat administration.

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

United Kingdom | Disclosure has failed to narrow the gender pay gap, so is it time to consider financial penalties (fines) for firms who fail to address it?

Writing in The Conversation, UK academics Professor Geraldine Healy and Lecturer Mostak Ahamed argue that disclosure of the gender pay gap has been unsuccessful to date in narrowing the gender pay gap including in the context of the financial services sector. As such, they suggest that further measures (in addition to disclosure) should now be considered.

Some Key Points

- **Reporting requirements have been ineffective in addressing the (gender) pay gap:** The UK government introduced legislation requiring employers with more than 250 employees to report annually their gender pay gap publicly beginning April 2018. However, according to the researchers increased transparency has been ineffective. In the context of the finance industry women earn 27.2% less than men an hour on average, increasing to 50% for bonuses.
- **Are initiatives to narrow the gap just 'window dressing'?** The researchers found that financial firms are investing in diversity strategies, but that these have proven to be ineffective in driving change. The researchers cite as an example of this, an award winning diversity strategy at one banking group which aims to reduce the pay gap 'over time' by gradually increasing the number of women in senior roles. However, the researchers found that the average pay gap figure at that banking group was above the average for the sector at 31.5% in 2018 (the average for the sector is 27.2%) and that the bonus gap was also above the 50% average for the sector. The failure of diversity initiatives generally in driving change is attributed by the researchers to the prevalence of other practices eg discretionary bonuses and increasingly long working hours that undermine diversity initiatives. The researchers go on to argue that the results of their analysis makes clear that gender equality is 'still not a strategic priority' adding that the second round of diversity reporting due in April 2019 is already indicating a worsened pay gap for four in ten firms.
- **Time to consider penalising firms who neglect to address the issue?** The researchers argue that change is unlikely without external pressure such as from unions, women's networks and pressure groups but that ultimately they consider change will only be achieved by the introduction of 'financial sanctions' on those organisations that show no progress in closing the gender pay gap.

[Source: The Conversation 05/03/2019]

In Brief | A US District Court has ordered the reinstatement of an Obama administration era reporting requirement for employers with 100 employees or more to report gender and ethnicity pay gap information. The National Women's Law Centre (NWLC) which sued in 2017 to revive the rule, has welcomed the decision on the basis that the information is an important factor in identifying, quantifying and addressing the issue

[Sources: Reuters 06/03/2019; National Women's Law Centre 05/03/2019; National Women's Law Center et al v Office of Management and Budget et al, Unites States District Court for the District Court of Columbia Memorandum Opinion]

In Brief | The gender pay gap persists, even at executive level? Based on analysis of the pay packages of more than 3000 executives working in ASX500 firms over a five-year period (2011-2014), there is still a 20% gender gap both in base salary and in incentives according to University of South Australia researchers. On average, men still take home $25,717 a year more than women, and even women at the top of organisational hierarchies, with all the experience and qualifications that they have, still experience a pay gap

[Source: University of South Australia media release 07/03/2019]

In Brief | Reportedly Deutsche Bank has reduced its 2018 bonus pool by approximate 15% to ($US2.3 billion), and many bankers at the firm have seen 'deep cuts' to the 2018 bonuses, with some New York and London based bankers receiving zero bonus. The bank has also reportedly considered closing its equities trading business after losing as much as $US750 million last year

[Source: Business Insider 07/03/2019]

Shareholder Activism

United States | ISS predictions of upcoming trends in shareholder proposal campaigns for 2019: Climate change remains a key investor concern

Institutional Shareholder Services Inc's (ISS') has released the results of its analysis of US shareholder proposal filings received as at 28 February (which ISS estimates represents approximately 50% of the total filings for 2019). Among other things, ISS has identified that climate issues will continue to be a key investor concern in 2019.

Some Key Points

- Overall proposals relating to social issues are the most prevalent (176 proposals), followed by environmental proposals (115) and finally governance/compensation related proposals (104).
- The top ten shareholder resolution types by number of filings in 2019 are: 1) lobbying; 2) environmental impact; 3) political contributions; 4) GHG Emissions; 5) board diversity; 6) sustainability; 7) link pay to social criteria; 8) reporting on climate change; 9) supermajority; 10) human rights. Commenting on this, ISS writes that the list includes many of the same proposal categories as 2018, including requests to report on political contributions and lobbying, requests to disclose targets on carbon emissions, and proposals seeking reporting on sustainability and climate change risks. ISS expects that as more data becomes available, the numbers are likely to change, and governance topics may 'climb towards the top of the list'.
- New issues in 2019? ISS expects several new topics including: drug pricing, ocean pollution by micro plastics, and immigration detention to emerge as investor concerns this year.
- Increased engagement on environmental and social proposals: ISS writes that there was a 'dramatic increase' in 2018 in the percentage of environmental and social proposals that were withdrawn following successful engagements with companies (48% withdrawal rate in 2018 as compared with an average 36% withdrawal rate in previous years). According to ISS, this trend looks set to continue this year, though as the status of 75% of proposals is pending, this is indicative only.
- The communications services sector (which includes telecommunications companies, such as Verizon Communications Inc and Comcast Corp, some technology firms, such as Alphabet Inc and Facebook

Inc, and media companies, such as The Walt Disney Corp and CBS Corp) has the highest percentage of companies in the S&P 500 that have received shareholder resolutions so far. ISS suggests that this 'makes intuitive sense' given the size of many of the organisations and the increased focus on their governance practices of late.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 05/03/2019]

Shareholder climate resolutions at Santos and Woodside? The ACCR has announced plans to file shareholder resolutions at both companies

The Australasian Centre for Corporate Responsibility (ACCR) has announced plans to file shareholder resolutions at Santos and Woodside Petroleum in 2019. The ACCR will be seeking from both companies:

- disclosure of strategies that are aligned with the goals of the Paris Agreement including how their spending or capital expenditure aligns with reducing emissions, and how executives are incentivised to deliver on the strategy
- commitment from both companies to review their memberships of industry associations. The primary focus of these resolutions will be the Australian Petroleum Production and Exploration Association (APPEA) and the Business Council of Australia (BCA), both of which 'have sought to obstruct climate policy for more than a decade' the ACCR writes.

[Note: In 2018, a shareholder resolution filed by the ACCR, seeking that Origin Energy Ltd conduct a review of lobbying memberships and report on whether lobbying groups (including industry associations) are obstructing action on climate change, secured the 'largest vote for any shareholder proposal in Australian corporate history' receiving 46% proxy support ahead of the AGM, despite the fact that it was not supported by the board. Though ultimately unsuccessful, Origin nevertheless committed to providing greater disclosure of its membership of industry associations, including describing processes for engagement and the company's contribution to policy advocacy, in future annual sustainability reports. See: Governance News 22/10/2019]

Response from Santos

Santos has announced it has received a notice from ACCR requisitioning resolutions for consideration at the Company's Annual General Meeting to be held on 2 May 2019.

Acknowledging receipt of the proposals Santos said in a statement that:

- its strategy already recognises the transition to a lower-carbon future and focuses on 'long-life natural gas assets'
- Santos' recently released second annual Climate Change report is aligned with the Task Force on Climate-Related Financial Disclosures (TCFD) and outlines Santos' approach to climate change, with a focus on emissions reporting processes, medium-term targets and emissions reduction projects
- The resolutions will not be put to the AGM as the requisition notice 'does not meet the requirements for requisitioned resolutions under the Corporations Act'. However, Santos said that it will address the issues raised at the AGM in the Chairman's and Chief Executive Officer's addresses and also provide shareholders the opportunity to discuss these issues over the coming weeks

[Note: Details of the Santos resolutions are here. Details of the Woodside Resolutions are here.]

[Sources: Santos media release 04/03/2019; ACCR Santos resolutions and supporting statements; Woodside Resolutions and Supporting Statements]

In Brief | Shareholder climate resolutions are 'flooding in'? The Australian reports that shareholder resolutions backed by Friends of the Earth, Market Forces and Australian Ethical investments will target 10 companies this year (AGL, BHP, Rio Tinto, Origin, Macquarie Group and the big four banks) seeking engagement on climate issues. The Australian comments that the resolutions follow the recent successful engagement by climate lobby group Climate 100+ at Glencore

[Note: Following successful engagement with Climate Action 100+ signatories, miner Glencore recently committed to aligning its business and investments with the goals of the Paris Agreement. According to media reports at the time, Climate Action 100+ said that it would target 12 Australian companies not to seek coal mine closures/divestment but to engage with the companies with a view to achieving progress. See Governance News 27/02/2019.]

[Source: [registration required] The Australian 08/03/2019]

In Brief | Divestment or just increased pressure on companies to engage on climate issues? The Australian suggests that the decision by Norway's sovereign wealth fund to cut exposure to Australia's oil and gas operators may spur Australian superannuation funds to follow suit, though some commentators have suggested that its more likely at this stage that rather than calling for outright divestment, investors and super funds are more likely to seek to engage with companies on climate issues in a bid to drive change

[Source: [registration required] The Australian 12/03/2019]

Institutional Shareholders and Stewardship

The Federal Budget should include measures to address the savings gap? Reportedly, the AIST has called on the government to take action to address the superannuation (gender) pay gap

Noting that currently Australian women retire with approximately 47% less superannuation than their male counterparts, and that two in five single women retire in poverty, the Australian Institute of Superannuation Trustees (AIST) has reportedly called on the government to implement four actions to address the issue. The AIST has called on the government to:

1. remove the monthly threshold (ie the $450 monthly income threshold) that precludes some women from receiving super payments
2. require that superannuation be paid on parental leave
3. for the government to more accurately report on the financial gap between the superannuation balances of women and men
4. for the government to raise the compulsory superannuation contribution from 9.5% to 12% in line with the legislated timetable.

AIST CEO Eva Scheerlinck has reportedly called for the measures to be part of this year's federal budget commenting that 'the longer the government waits to address the gender savings gap, the more women will retire with inadequate incomes'.

[Source: Investor Daily 11/03/2019]

In Brief | First ESG Australian bond fund launched: BlackRock has reportedly launched a new indexed fund that will invest in Australian bonds with an ESG focus, with backing from a $21 billion government superannuation fund (VicSuper)

[Source: Financial Standard 06/03/2019]

Other Shareholder News

In Brief | Should the ASX Principles and Recommendations be abandoned? RMIT academics have questioned whether self-regulation is an appropriate mechanism and suggested that the Governance Code should be scrapped. If Australia is to have a Governance Code, they argue that it should be written by a government-convened commission of experts and community representatives (as has happened in Germany) rather than by and for industry insiders

[Source: The Conversation 05/03/2019]

Regulators

ASIC to target executives and directors? An ASIC internal review has reportedly recommended that ASIC's office of enforcement target senior executives and directors

The Australian reports that according to a 'heavily redacted' internal review of the Australian Securities and Investments Commission's (ASIC's) enforcement priorities authored by Chair Daniel Crennan QC, ASIC plans to increase the deterrence value of future enforcement action by focussing its efforts on holding senior bank executives and possibly directors to account. The Australian quotes Mr Crennan as writing that 'When appropriate, proceeding against both the corporation and the individual corporate officers responsible for the contravening actions of the company should be the Office of Enforcement's primary objective.'

Reportedly Mr Crennan suggests in the report that lessons might be learnt from the US Securities and Exchange Commission, which charged individuals in more than 70% of the stand enforcement actions it brought in 2018.

The Australian comments that a 'huge increase' in ASIC's budget will be necessary in order to meet increased expectations and that as yet this has not yet been secured, though ASIC Chair James Shipton is reportedly negotiating with the government to secure the necessary funds.

[Sources: [registration required] The Australian 12/03/2019; 12/03/2019]

Financial Services

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

Implementation of Financial Services Royal Commission Recommendation 5.5: Progress update on implementing the recommendations of the Sedgwick Review

The Australian Banking Association (ABA) has released an progress update, completed by former Public Service Commissioner Mr Stephen Sedgwick, on progress towards implementation of his 2017 remuneration review recommendations. The deadline to fully implement the changes is 2020.

Mr Sedgwick writes that the review addresses the policies that banks have adopted, 'or have firm plans to adopt,' in respect of variable remuneration, performance management and the desired workplace culture. Mr Sedgwick adds that a 'systematic assessment' has not been conducted into how well the changes have been implemented in practice. He comments that 'so recent are the changes it is premature to attempt such an assessment, especially in respect of bank culture' adding that practical implementation would be better assessed for the review originally proposed for 2021.

Some Key Points

- **Overall Mr Sedgwick found that banks are on track to meet to implement the recommendations** 'well in advance of the 2020 deadline'. Though banks are implementing the reforms at varying rates, Mr Sedgwick writes that 'overall, substantial progress has already occurred. The clear trend is towards policies that will be fully consistent with the Recommendations in respect of in-scope bank staff well in advance of 2020'.
- **'Good progress' in reforming remuneration of bank staff:** The review found that banks have made 'good progress' in reforming remuneration of bank staff. For example: banks have reduced the use of bonuses based on financial incentives for front line staff and bonuses for bank tellers are now generally based on broader customer service measures with ‘sales based’ measures greatly reduced. Mr Sedgwick observes the remaining adjustments often involve 'further steps to reduce the likelihood of miscommunication about the desired practices and culture, especially in terms of any lingering perceived direct link between sales performance and rewards' eg how scorecards are applied in practice, the design and use made of leader boards and how targets are set and monitored.
- **Mr Sedgwick describes the changes to broker remuneration to date as 'modest'.** Mr Sedgwick observes that though, payments other than commissions have 'typically been removed' and the move to pay brokers commission based on the loan drawn down net of offsets is a 'step in the right direction' the changes do not 'fully meet the intent of my original Recommendation', which 'favoured the

introduction of a lender-paid fee for service related to the effort required of the relevant third party rather than relative to loan size, with some deferred payment mechanism (effectively truncated trail payments)'. Mr Sedgwick observed that the 'situation in respect of third parties is complicated by differences in the preferred policy positions of key regulators and reviewers, which hopefully should be resolved by the time of the 2021 review'.

- **The report identifies seven issues Mr Sedgwick considers to be 'still unfolding' in respect of how retail banks will meet the intent of the 2017 Recommendations**, namely: a) the proper role of targets; b) what constitutes a 'relatively small' maximum potential variable remuneration (compared to fixed pay); c) customer metrics, including in respect of the outcomes achieved by customers; d) discretion and manager capability; e) third party remuneration; f) the interests of shareholders; and g) bank culture and the risk of 'change fatigue'.
- **The report includes three further recommendations** (in addition to the 2017 recommendations:
  1. **That a further assessment of the banks' progress in implementing the 2017 recommendations occur in the first half of 2021**. Mr Sedgwick comments that this is more specific as to timing than the original recommendation 15.
  2. **Development of principles to underpin customer metrics?** That the ABA establish whether there is sufficient support for 'collaborative work to develop principles that should underpin metrics that capture the outcomes customers achieve'. Mr Sedgwick comments that his 'impression' is that customer metrics are less sales oriented than was the case previously but that this 'should be tested' with a survey or other evidence as well as being a focus of any subsequent implementation review.
  3. **Broker/aggregator remuneration:**
     - **'Reconsideration' of the CIF standard commission model:** Mr Sedgwick writes that the Combined Industry Forum (CIF) has made 'substantial progress' in addressing 'most' of his original recommendations but that due to a combination of market dynamics and a 'significant reluctance in some quarters to acknowledge the residual risk' a 'viable alternative' to the standard commission model has failed to emerge. He considers that this is unlikely without regulatory change. He recommends that the ABA reconsider the approach adopted by the Combined Industry Forum (CIF) to the 'standard commission model' for the remuneration of mortgage brokers/aggregators in the light of the findings of the Financial Services Royal Commission and the 2017 review recommendations.

[Note: In his final report, Commission Hayne comments that he considers the CIF reforms to be 'limited' because they 'would not alter the basic structure of brokers' remuneration…It is those elements of the structure that drive poor customer outcomes'. Recommendations 1.3 recommends that the borrower and not the lender should pay the mortgage broker a fee for acting in in connection with home lending.]

- **Implementation of a fee for service remuneration model:** That the ABA work with relevant agencies including the Australian Securities and Investments Commission (ASIC) and the Australian Competition and Consumer Commission (ACCC) to secure regulatory reform that will permit the introduction of a fee for service remuneration model (for aggregators, brokers and introducers). The reform should 'preserve the viability of third party channel' but link payment to 'the effort expended in securing the loan for the customer rather than the value of the loan secured, with appropriate deferred payment options (not long lived trail commissions)' he writes.

[Note: The Financial Services Royal Commission's Final Report included a recommendation that mortgage broker remuneration change. More particularly, Recommendation 1.3 recommends that the 'borrower, not the lender, should pay the mortgage broker a fee for acting in connection with home lending. Changes in brokers' remuneration should be made over a period of two or three years, by first prohibiting lenders from paying trail commission to mortgage brokers in respect of new loans, then prohibiting lenders from paying other commissions to mortgage brokers. The government has committed to 'address conflicted remuneration for mortgage brokers' but has stopped short of committing to implement a consumer pays model. See: FSRC Final Report: Mortgage broking implications 11/02/2019. The Labor Party have said that (if elected) they will implement 75 of 76 recommendations (with the exception of recommendation 1.3). Instead (if elected) Labor plans to implement other measures eg fixed rate commissions, to implement the intention of Commissioner Hayne's recommendation. See: Governance News 27 February.]

Banks on the 'front foot' in implementing recommendation 5.5: Commenting on the report, CEO of the Australian Banking Association Anna Bligh said the Royal Commission highlighted the need to continue to implement the 2017 report by Mr Sedgwick as soon as possible (recommendation 5.5).

She added that the 'report has found banks have been on the front foot in implementing the "Sedgwick reforms" to bank staff pay, with many on or ahead of schedule in overhauling their salary structures. Bonuses for bank staff are better balanced, focussing on what's best for the customer and excellent service rather than simply sales targets'. Commenting on broker remuneration, Ms Bligh said that the report 'highlighted the lack of action on mortgage broking remuneration' but said that Mr Sedgwick 'acknowledged the complexity of the area given the number of parties involved and potential for regulatory intervention following the Royal Commission'.

[Sources: Australian Banking Association media release 12/03/2019; Retail Remuneration Review: Assessment of Progress Stephen Sedgwick February 2019; [registration required] The Australian 12/03/2019; [registration required] The Age 12/03/2019]

Review of the Four Major Banks: CBA and Westpac CEOs have recently appeared before the Standing Committee on Economics and (among other things) have provided updates on implementation of the FSRC recommendations

CBA: Opening Statement before the Committee

In his opening statement to the House of Representatives Standing Committee on Economics CBA CEO, Matt Comyn, said the bank is working towards rebuilding the trust of the community by focusing on three key areas.

1. Addressing past failings: Mr Comyn said that the CBA will revisit historical cases where customers remain dissatisfied, and provide compensation where the bank 'got it wrong'. Mr Comyn said the bank is also making improvements to how it addresses customer complaints to ensure that problems are resolved 'consistently, quickly and fairly'. This includes, Mr Comyn said, changes to the way in which the bank approaches remediation to identify systemic issues earlier, and to ensure the root cause is addressed.

2. Strengthening internal governance, culture and accountability: Mr Comyn said that work to address issues identified in APRA's prudential inquiry has been underway for the past nine months. Mr Comyn said that though the process is not yet complete, a recent independent Promontory report showed that the bank is on track with progress to date.

3. Delivering better outcomes to customers: Mr Comyn said committed to: a) grow its lending to small business with a faster and better service for approving loans; b) support farmers facing difficulties including no longer charging interests on agricultural term loans in the event of a drought or other natural disaster; and c) continuing to add features such as an instalment services on credit cards to assist customers to pay down their outstanding debt more quickly and at a lower rate.

Mr Comyn added that the CBA is acting to implement all of the recently completed Hayne Commission's recommendations that apply to its business and that the bank will provide regular updates on its progress to implement the Royal Commission recommendations. The bank has also established its own Royal Commission Implementation Taskforce, chaired by deputy CEO, David Cohen.

Westpac: Opening Statement before the Committee

In his opening statement to the Committee Westpac Managing Director and CEO Westpac Group Brian Hartzer said that the bank is 'implementing the recommendations' of the recently completed Financial Services Royal Commission 'to make sure that this experience is a profound turning point for Westpac'. He also said that 'Westpac remains open for business and determined to get on with the hard work we need to do to restore our customer's and the community's trust'.

Some Key Points

- **Progress on implementing the Hayne recommendations:** Mr Hartzer said of the 53 recommendations requiring direction action by Westpac, 25 recommendations are we 'already completed' or being implemented. Mr Hartzer said that the remainder of the recommendations would require additional guidance from government or regulators but that where Westpac could take action ahead of this, 'we will' as it has already done on removing grandfathered commission payments for financial planners, and in implementing the Sedgwick review recommendations. Mr Hartzer added that he expects that the work would be ongoing and committed to 'continue to review our products, pricing and compliance processes in detail on a regular basis. This means we may still uncover more issues to fix, but we're determined to make the changes we need so that we can once again be worthy of our customer's trust'.

- **Customer complaints:** Mr Hartzer said that Westpac has reduced the time taken to close complaints by 30% over the past six months. This has been achieved, Mr Hartzer said through various measures including: the establishment of a specialist team dedicated to 'giving vulnerable customers the extra care they may need' and a customer outcome committee to work through complex cases. Mr Hartzer added that since July 2018 Westpac has resolved more than 500 'long-dated complaints', with many of the 200 that remain currently with AFCA for review. Westpac has also provided staff with new training and tools and has built complaint handling into the scorecards of group executives and general managers.
- **'Westpac remains open for business':** Mr Hartzer said that despite commentary to the effect that the Hayne Royal Commission has led to banks tightening access to credit, Westpac remains willing to lend. 'Our view is that the wealth effect is real, if hard to quantify, but that price declines are more to do with housing supply and demand factors than with banks tightening credit. For Westpac, our approval rates have been steady and our risk appetite hasn't changed significantly in the last 12 months' he said. Mr Hartzer added that Westpac is requiring more extensive verification of customer expenses which adds to the approval time, but that this is expected reduce (through automation) over time. Mr Hartzer said that 'as further reforms and legislative changes are enacted, it will be important to avoid changes that unintentionally impact the availability or pricing of credit or have detrimental effects on the very consumers they are designed to protect'.

Implementation of Hayne recommendation 1.10?

SME lending: Among other things, both Mr Hartzer and Mr Comyn were asked for their views on Recommendation 1.10 in the Financial Services Royal Commission's final report which recommended expanding the definition of small business in the Australian Banking Association (ABA) Code of Practice. Both Westpac and CBA expressed support for the recently revised definition in the ABA Code of practice to remain unchanged at $3m. Both Mr Hartzer and Mr Comyn separately expressed the view, that their position is consistent with the rest of industry. Mr Hartzer also suggested that industry is concerned that the proposed expansion of the definition would likely result in a 'tightening up of credit for customers'.

[Note: In a recent statement, the ABA committed to implementing recommendation 1.8,1.13 and 1.15 (which relate to amendments to the ABA Code of Banking Practice) but that it 'has not yet reached a view' on whether to implement recommendation 1.10. The reasons given in the ABA's statement, for the need to further consider their position, appear to be similar to/consistent with those provided by Mr Hartzer and Mr Comyn. See: Governance News 06/03/2019]

[Sources: CBA media releases 08/03/2019; 08/03/2019; CBA action on Royal Commission recommendations March 2019; House of Representatives Standing Committee on Economics: Review of Australia's four major banks Transcript 08/03/2019; [registration required] The AFR 08/03/2019]

Measures to implement Hayne recommendation 5.4: Reportedly Westpac plans to eliminate variable pay for 2300 bank tellers completely to enable more focus on serving customers

The Age reports that Westpac plans to remove incentives for 2300 tellers from next month, and instead pay them fixed wages (which have been lifted by $500), to enable them to focus on serving customers.

Chief executive of consumer banking George Frazis, is quoted as commenting that the change will mean that tellers 'can actually just be concerned about providing great service to our customers and making sure that they do whatever they can to meet our customers' needs.' He added that 'There's no doubt what came out of the [Financial Services] royal commission is that you've got to make sure that you've got incentives in place that don't create conflicts of interest when it comes to taking a long-term view, and taking an absolute customer perspective, and making sure you've got a strong risk culture'.

[Note: The Financial Services Royal Commission's final report included a recommendation that all financial services entities should review 'at least one each year the design and implementation of their remuneration systems for front line staff to ensure that the design and implementation of those systems focus on not only what staff do but also how they do it. (recommendation 5.4). See: Financial Services Royal Commission Final Report volume 1]

According to The Age, other Westpac staff within the consumer bank will still receive bonuses, including some with financial targets. CBA, ANZ and NAB tellers reportedly all currently receive some variable remuneration.

[Source: [registration required] The Age 07/03/2019]

In Brief | About turn? The Treasurer has said that the government will not ban trail commissions from July 2020 as first announced in response to the Hayne Final Report Recommendations, but will instead review their operation in three years' time. The review will be conducted by the Council of Financial Regulators and the Australian Competition and Consumer Commission (ACCC) and will also consider the continuation of upfront commissions. 'Only the Government can be trusted to protect the mortgage broking sector and ensure that competition is strengthened so consumers get a better deal' the Treasurer states

[Sources: Treasurer Josh Frydenberg media release 12/03/2019; [registration required] The AFR 12/03/2019]

Other Developments

ASIC FFNS update | ASIC has provided an update on fee for no service issues at AMP, ANZ, CBA, NAB and Westpac

The Australian Securities and Investments Commission (ASIC) has released an update on the fees for no service (FFNS) further review programs undertaken by AMP, ANZ, CBA, NAB and Westpac.

ASIC states that 'most' of the institutions are 'yet to complete' reviews to identify systemic FFNS failures beyond those already identified and reported to ASIC since 2013.

According to ASIC the main reasons for the delays in completing the further reviews are:

1. 'poor record-keeping and systems within the institutions'
2. 'failure by some institutions to propose reasonable customer-centric methodologies to identify and compensate customers despite ASIC's clear articulation of expectations'
3. 'some institutions have taken a legalistic approach to determination of the services they were required to provide'. ASIC states that its view is that 'the agreement requires an annual review, the mere offer of an annual review is not sufficient'.

[Note: ASIC's statement also includes an appendix containing a 'report card' on further reviews by each of the institutions. These can be accessed on the ASIC website here]

ASIC adds that AMP, ANZ, CBA, NAB and Westpac have collectively paid or offered approximately $350 million in compensation to customers who were charged financial advice fees for no service at the end of January 2019. Additionally, the institutions have provisioned more than $800 million towards potential compensation for 'further systemic FFNS failures'.

ASIC Commissioner Danielle Press said 'These reviews have been unreasonably delayed. ASIC acknowledges that they are large scale reviews – they relate to systemic failures over long periods with reviews going back six to 10 years and cover 36 licensees from the six institutions that currently authorise more than 7,000 advisers. However, we believe the institutions have failed to sufficiently prioritise and resource their reviews, particularly as ASIC advised them to commence the/ reviews in mid-2015 or early 2016.' Ms Press went on to say that she welcomed the government's commitment to adopt recommendations from the 2017 ASIC Enforcement Review Taskforce Report, which includes a directions power for the regulator.

ASIC states that it will continue to supervise and report on the institutions' further reviews into FFNS failures and that it is also 'conducting a number of FFNS investigations'. ASIC writes that it plans to take enforcement action against licensees that have engaged in misconduct.

[Sources: ASIC media release 11/03/2019; Financial Standard 11/03/2019; [registration required] The AFR 11/03/2019; [registration required] The Age 12/03/2019]

'Future proofing' the ePayments Code? ASIC is seeking feedback on the proposed scope of its review of the ePayments Code

The Australian Securities and Investments Commission (ASIC) has released a consultation papers (CP 310 Review of the ePayments Code: Scope of the review) seeking feedback from stakeholders on the proposed scope of its review of the ePayments Code (Code). The regulator plans to issue more detailed proposals for a second, more substantive, consultation paper later in 2019.

About the Code: Users of electronic payment facilities in Australia are protected by the ePayments Code. The Code regulates consumer electronic payments, including ATM, EFTPOS and credit card transactions, online payments, internet and mobile banking, and BPAY. ASIC is responsible for the administration of the Code. ASIC states that almost all banks, credit unions and building societies in Australia are subscribers to the Code. Other providers of consumer electronic payment facilities such as PayPal have also subscribed to the code.

Reasons for undertaking the review: Since ASIC's previous comprehensive review of the ePayments Code in 2010, there have been significant developments in the payments environment, which have implications for the ongoing effectiveness and relevance of the Code's provisions. ASIC states that the review is an interim measure before any implementation of the Financial System Inquiry (FSI) recommendation to mandate the Code.

Proposed scope of the review: ASIC proposes that the review focus on:

- 'future proofing the Code': ASIC proposes to assess whether the Code, as currently worded, has successfully adapted to today's payments environment and is sufficiently adaptable to respond to emerging and future developments in financial technological innovation and changing customer behaviours.
- complaints handling: ASIC propose to assess the clarity and appropriateness of the current policy positions in the Code's complaints handling provisions.
- unauthorised transactions: ASIC proposes to consider whether the current settings in the Code for unauthorised transactions are appropriate and sufficiently clear
- data reporting: ASIC proposes to review the data reporting requirements in the Code and assess the most valuable and efficient approach.
- mistaken internet payments: ASIC proposes to consider whether the provisions in the Code for mistaken payments are simple and accessible enough, and whether ADI subscribers should have any role in mitigating or preventing such payments.
- small business access to Code provisions: ASIC proposes to consider whether it may be appropriate to extend the Code, or at least some of its protections, to small business.
- Any other aspects of the Code that may need updating. These may include: The Code's approach to low-value facilities; the introduction by APRA of a restricted ADI framework; and the effect of recent legislative developments for gift card expiry dates.

Beyond the scope? ASIC considers that it is beyond the scope of this review to: convert the ePayments Code to a mandatory code of practice or to introduce a legislative foundation for the Code (ASIC states that it does not have power to make the Code mandatory); or change the key aspects of the Code in a way that significantly changes the entities to whom the Code is relevant.

Timeline: ASIC is seeking feedback from interested parties by 5 April 2019.

[Sources: ASIC media release 06/03/2019; CP 310 Review of the ePayments Code: Scope of the review; The ePayments Code; List of current Code subscribers]

In Brief | NAB interim CEO and Chair elect Philip Chronican has written to shareholders to advise that the bank has 'returned more than $110m' to customers since June 2018, that it will accelerate the customer repayment program and that it will change its executive remuneration framework to ensure 'compensation appropriately reflects the individual and collective performance of the executive team'. In addition, the letter flags that the board has identified 'renewal as a priority' for 2019

[Sources: NAB ASX Announcement CEO's letter to shareholders 12/03/2019; [registration required] The AFR 07/03/2019]

In Brief | According to Westpac, 50% of small businesses are worried or uncertain about the impact federal election policies will have on their operations, and are choosing to delay decisions such as staffing and investment as a result. According Westpac 'the most helpful thing' the government could do to help small business is decrease energy costs, reduce regulation and red tape, and increase small business grants

[Source: Westpac media release 11/03/2019]

In Brief | Fortune reports that there is a trend among the biggest US banks (JP Morgan Chase, Wells Fargo, and Bank of America) towards reducing their branch networks and increasing use of ATMs in lower income areas. Reportedly the banks have shut 1,915 more branches in lower-income areas than they opened between 2014 and 2018

[Source: Fortune 06/03/2019]

Accounting and Audit

In Brief | The UK government is consulting on plans to implement certain recommendations of the Kingman Review including the replacement of the Financial Reporting Council (FRC) with a new regulator to be called the Audit, Reporting and Governance Authority. The new regulator will have a new mandate, new leadership and stronger powers. Recruitment for the new chair, deputy chair and CEO will begin shortly. The initial consultation will close on 11 June 2019

[Note: On 17 April 2018, the UK government announced the launch of an independent 'root and branch' review of the FRC to be conducted by Sir John Kingman (the Kingman Review). See: Governance News 20/04/2018. The Review was completed at the end of 2018. The Review made 83 recommendations, among them that the FRC be replaced 'as soon as possible' with a new independent regulator with clear statutory powers and objectives. See: Governance News 16/01/2019.]

[Sources: Independent Review of the Financial Reporting Council: Initial consultation on the recommendations; [registration required] The AFR 12/03/2019; ICAEW Economia 11/03/2019; FRC media releases 11/03/2019; 11/03/2019]

Risk Management

Cybersecurity and privacy

Top Story | The new Consumer Data Right and the energy sector: The ACCC is consulting on three possible data access models that will be used to implement the CDR in the energy sector, which is expected to commence in the first half of 2020

As previously reported in Governance News 27/02/2019, the Australian Competition and Consumer Commission (ACCC) is consulting on three possible data access models that will be used to implement the CDR in the energy sector, which is expected to commence in the first half of 2020.

MinterEllison's Eliza Bartlett has written a detailed article outlining the proposed data access models and next steps. You can access the article on the MinterEllison website here: https://www.minterellison.com/articles/the-new-consumer-data-right-and-the-energy-sector

Consumer Data Right | Treasury has released a second Privacy Impact Assessment

Treasury has released a second version of the *Privacy Impact Assessment* (PIA) for the Consumer Data Right (CDR), in accordance with the *Privacy (Australian Government Agencies — Governance) APP Code 2017* and the Office of the Australian Information Commissioner’s (OAIC) *Guide to undertaking Privacy Impact Assessments*.

The second version of the PIA incorporates stakeholder feedback received as part of the public consultation undertaken on the first version of the PIA and also feedback received from a privacy consultant engaged by Treasury to conduct independent quality assurance of the PIA.

The PIA is a living document, and updates will occur where any changes to the CDR significantly impact upon privacy. The next version of the PIA will be completed once the CDR Rules and Standards have been finalised.

[Sources: Treasury media release 01/03/2019; Privacy Impact Assessment – Consumer Data Right – March 2019; Review of the Consumer Data Right PIA – Consulting report]

Consumer Data Right | OAIC has provided feedback on how privacy protections could be strengthened in the CDR Bill

In her opening statement to the senate economics legislation committee inquiry into the CDR Bill (*Treasury Laws Amendment (Consumer Data Right) Bill 2019)* Australian Information Commissioner and Privacy Commissioner Angelene Falk outlined several ways in which privacy protections in the Bill could be strengthened. 'There do remain opportunities to strengthen the framework and the role of my Office specifically in relation to the Rules' Ms Falk said. These include the following.

- Amending the Bill to require that the rule-maker (The Australian Competition and Consumer Commission (ACCC)) make rules in relation to those elements that are critical to ensuring a strong and effective privacy protection framework. As drafted, Ms Falk contends, the Bill states that the rule-maker ‘may’ make rules.
- 'For abundant clarity' and 'in recognition of the OAIC’s privacy expertise' the Bill should be amended to require the ACCC to have regard to the Australian Information Commissioner and Privacy Commissioner's recommendations and to further require the Minister to be satisfied that any privacy concerns raised by the Commissioner had been addressed before consenting to the making of the rules. Ms Falk states that she considers that this measure would 'provide additional assurance to the community'.

Commenting more generally, Ms Falk suggested that there is opportunity to 'consider the case for enhancing privacy protections generally in Australia, alongside this initiative, to ensure that personal information is protected while facilitating information flows'.

Reportedly, Treasury acknowledged to Committee that the Bill (as drafted) does not meet the expectations of the Australian Privacy Foundation or other digital rights groups.

[Sources: Opening statement by Australian Information Commissioner and Privacy Commissioner 27/02/2019; InnovationAus 11/03/2019]

Climate Risk

In Brief | The Climate Change Authority has released a 'stocktake' of Australia's climate change policies. The report found that the approach taken to reducing emissions varies across Australia’s states and territories and across different sectors with the majority of policies concentrated in the energy sector. The Authority states that it has not analysed the effectiveness of policies and will consult later in the year as it develops its approach to updating its advice. The Authority would also welcome 'input on the accuracy and reliability of the information contained' in the stocktake' and any additional relevant information

[Sources: Climate Change Authority media release 08/03/2019; Consultation 08/03/2019]

Whistleblowing

Is there a 'clear duty' for the government to intervene to stop the prosecution of former public servant Richard Boyle? Mr Boyle is reportedly facing 161 years in gaol after blowing the whistle on poor culture at the Australian Taxation Office

The SMH reports that Centre Alliance Senator Rex Patrick has called on the federal government to intervene to stop the prosecution of whistleblower and former public servant Richard Boyle. Mr Boyle has reportedly been charged with 66 offences after blowing the whistle on (allegedly) poor culture at the Australian Taxation Office. Reportedly the charges include recording conversations of ATO staff without consent and making a record of protected information, which was handed to a third party.

Reportedly Senator Patrick has written to Attorney-General Christian Porter arguing that the adverse consequences for Mr Boyle (eg potential to discourage future government whistleblowers from coming forward, potential to undermine public confidence) justify government intervention. Senator Patrick is also quoted as stating that 'It would make an absolute mockery of the government's declared support for the public interest disclosure regime…It is your clear duty to intervene and bring this prosecution to an end' Senator Patrick is quoted as stating'.

Reportedly Mr Porter's spokesman said that the 'Attorney-General will consider the letter thoroughly and seek advice on the content'. Reportedly, the ATO declined to comment.

[Source: [registration required] The SMH 08/03/2019]

Other Developments

United Kingdom | UK Treasury committee report — economic crime, anti-money laundering supervision and sanctions

The UK Treasury Committee has released its 'unanimously agreed' report: *Economic Crime — Anti-money laundering supervision and sanctions implementations*.

Some Key Points

- The scale of economic crime in the UK is very uncertain, with estimates ranging from the tens of billions of pounds to the hundreds of billions. The report recommends that the government should provide a more precise estimate of the scale of economic crime in the UK so that the response can be tailored to the problem and that more frequent reviews of the UK's anti-money laundering and supervision activities should be instituted.
- Two sectors of 'particular concern' in the UK's 'fragmented AML supervision' are property and company formation.
- The report recommends that estate agents be registered with the HMRC for AML purposes.
- Another area of concern identified in the report is company formation, specifically the role of Companies House, which is not required to carry out any AML checks. The report states that this is a weakness in the UK's system for preventing economic crime. The report recommends that the government 'urgently consider giving it the powers to ensure that it plays no role in helping those undertaking economic crime'.
- 'The UK's corporate criminal liability framework for economic crime has been described as not fit for purpose'. The UK government should consider proposals for new legislation, including a proposal that a company would be guilty of the substantive criminal offence if a person associated with it commits a certain offence, and the introduction of a new offence of failing to prevent economic crime.

Commenting on the Report, Chair of the Treasury Committee Nicky Morgan MP said: 'With the uncertainties of Brexit around the corner, the Government should regularly review the UK's effort to combat money laundering to ensure a constant stimulus to improve. When the UK does leave the EU, there will be both risks and opportunities in terms of economic crime…The Government needs to bring greater order to a fragmented supervisory system, better identify the scale of the problem, and make a greater effort to combat the known risks and gaps in the supervisory system'.

[Sources: UK Treasury Committee media release 08/03/2019; Economic Crime — Anti-money laundering supervision and sanctions implementations]