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Diversity

Top Story | Better the devil you know? A report into diversity among ASX 200 CEOs has concluded that Australian firms tend to 'play it safe' and remain conservative in making executive appointments, tending to seek out CEOs that share similar education/experiences drawn from a narrow talent pool

Report overview | Easy to classify — the education and experiences of Australian CEOs

A report into diversity among ASX 200 CEOs has concluded that Australian firms remain conservative in making executive appointments, tending to seek out CEOs that share similar education/experiences drawn from a narrow talent pool. This prompts report writer, Conrad Liveris, to question whether Australian companies are (necessarily) sourcing the best talent available.

Key Takeouts

1. **Lack of gender diversity:** The report found that there are more ASX200 CEOs called Andrew than there are women - the 'average' Australian CEO is a man, most likely named Andrew (7% of CEOs) or Michael (5.5%). By comparison, 5% of ASX 200 CEOs are women.

2. **Lack of diversity of skills/experience?** The report found that the CEO candidate pool has remained narrow with most CEOs sharing similar educational experiences and following similar pathways to become CEO and that this has changed little over time.

3. **Are firms (necessarily) sourcing the best available talent?** The report does seek to suggest that firms are necessarily making the wrong decisions with respect to CEO appointments. However, in light of the lack of diversity among ASX200 CEOs, it does question whether firms should consider revisiting their approach, to ensure they are recruiting the best available talent.

Introduction

Consultant Conrad Liveris has released a report, based on the annual reports/websites of ASX200 companies, identifying commonalities and norms in the educational and professional experiences of CEOs. According to his analysis, the CEO candidate pool has remained narrow (despite the fact that business is increasingly global) and the pathway to become CEO has likewise remained narrow and has changed little over time. The report questions whether, in the context of increasing community expectations of Australian business, businesses should consider revisiting their approach to ensure they are recruiting the best available talent rather than sticking with the 'devil they know'.

Some Key Findings

- **More CEOs called Michael than there are women?** The 'average' Australian CEO is a man, most likely named Andrew (7% of CEOs) or Michael (5.5%). By comparison, 5% of ASX 200 CEOs are women\

- **70% were promoted internally to CEO**. Before becoming CEO, the report found that CEOs were most likely CFO of the same company, or headed a business unit within it. For those that weren't CFOs prior to appointment as CEO, 16% have principally finance experience. There are no CEOs appointed from business-wide roles (eg HR, marketing, legal). No CEO has headed more than two listed companies.

- **75% have principally domestic experience**. Having said this, CEOs generally have some (but limited) international experience or remit in roles (usually earlier in their careers). If the CEO does have international experience, these are mostly in single jurisdictions/markets. The report suggests this may be a 'distinct weakness' in an export oriented market.

- **65% have 10+ years of experience in the industry his company operates in**

- **6% of CEOs are founders**

- **Education:** The report found that CEOs tend to have similar educational experiences, reflective of the years in which they were educated (the 1970s and the 1980s).

  - Most attended 'sandstone' universities in the cities in which they were born and schooled and (most likely) now work

  - Most studied engineering, business or economics: 27% studied engineering, 25% studied business or economics (becoming accountants or finance professionals eg bankers), 6% have bachelor of arts degrees, and 4.5% studied law and became admitted lawyers

  - The proportion of CEOs who have undertaken further study is higher than in the general population: 34% have undertaken further study and 27.5% have an MBA. This is 'noticeably higher' than the general population, where the rate of postgraduate education is ~4%

Conclusions?

- **'There is a narrowness in who becomes CEO of an Australian company'**: Mr Liveris is quoted as saying that the results indicate that Australian firms have a 'very trusted method for choosing who will lead their business' and that the pathway to get to the CEO role is fairly clear and fairly narrow. Even where CEOs don't commence their career on the traditional pathway, they tend to fall into it at some point. Mr Liveris reportedly added that the narrow, common pathway towards the CEO role demonstrates assumptions about who should be CEO.

- **Time to consider revisiting this approach?** Mr Liveris makes clear that the report is not intended to suggest that the current approach to appointing CEOs is necessarily flawed/dictate to business that the approach should necessarily change. Rather he writes that, the report 'intends to stimulate thought on whether that [the current approach] is fit for purpose. Indications from the market suggest that this has not been substantially changed in decades.' Mr Liveris adds that the limited international experience of CEOs in particular, may be a 'distinct weakness'.

About the report: The report was based on a review of publicly available discloses from ASX200 companies about the education and professional experiences of their CEOs. The material was gathered in January 2019 and reviewed in March 2019. Conclusions are based on the disclosures made in annual reports and websites by those companies. Additional evidence was sourced from the Australian Bureau of Statistics, specifically Census analysis, 4261, 6227 and 6202.

Response to the report

- **Australian Council of Superannuation Investors** (ACSI) CEO Louise Davidson is quoted as saying that the results highlight a risk that companies are not taking advantage of the broader talent pool available. 'This is yet another reminder that more work needs to be done on the diversity of management teams'.

[Note: Among the policy reforms put forward by ACSI in response to the Financial Services Royal Commission is a call for all listed entities to be required to set a time frame within which they will achieve board gender balance (40:40:20). ACSI suggests that if this is not achieved by 2025, then regulatory intervention should occur. See: Governance News 08/05/2019]

- **Australian Institute of Company Directors** general manager of advocacy, Louise Petschler, reportedly expressed a similar view to that put forward by ACSI. 'Just as boards need to work harder to improve diversity around board tables they also need to ensure they are making use of the available talent pool when making CEO appointments… Gender diversity is obviously a critical consideration in this mix' Ms Petschler reportedly said.

[Sources: Conrad Liveris report: Easy to Classify — The education and experiences of Australian CEOs; The New Daily 11/05/2019]

Lack of diversity is not in the best interests of members? On 1 May 2019, Future Super became the first super fund to completely exclude investments in companies that have no women on their boards

Future Super has announced that it has excluded investments in seven companies with all male boards after the companies in question failed to meet a deadline (set by Future Super) to improve board diversity or share plans to do so.

In announcing the decision, Future Super cited 'a figurative mountain of evidence' to support the value of increasing diversity including research by McKinsey and MSCI.

Best interests of members?

Future Super managing director Kirstin Hunter is quoted by Financial Standard as stating that the decision was made in the best interests of members. Failure to include women on boards is not 'just bad governance; it's also bad economic management. There's plenty of research that shows that companies with diverse boards perform better… Companies with no women on their boards are ignoring research and ignoring the benefits that diversity could have for their investors. So we've made the decision not to expose our members to that risk'.

According to Financial Standard, in the past, Future Super has engaged with companies with all-male boards to discuss them developing timelines to improve board diversity and had found Australian companies to be responsive.

[Note: The imposition of 40:40:20 board gender targets for Australian listed companies are among the reforms proposed by the Australian Council of Superannuation Investors (ACSI) as part of its broader policy response to the Financial Services Royal Commission. See: Governance News 08/05/2019.]

[Source: Future Super blog 03/05/2019; Financial Standard 09/05/2019]

United Kingdom | The Guardian reports that investor group, the Investor Association, is pressuring some of the UK's largest companies (including Lloyds Banking Group) to boost the number of women on their boards this AGM season

The Guardian reports that the trade body that represents UK asset managers, the Investor Association (IA), has cautioned 94 listed companies (including, among many others, Lloyds Banking Group, Foxtons and Paddy Power) on their lack of progress on improving board (gender) diversity ahead of their AGMs. Reportedly the list of companies targeted includes 57 FTSE 350 companies (11 of which are in the FTSE 100) and is expected to grow as the AGM season goes on.

Lack of female board representation cited a reason to vote against the election of nomination committee chairs: According to the Guardian, the IA's institutional voting information service has given the highest warning, or 'red top' to 20 firms with all-male boards or 'one and done' boards (ie boards that include a single female director). Reportedly, a further 74 firms have been issued with an 'amber top' warning if women account for less than 25% of the board. The Guardian reports that although the IA's institutional voting information service does not issue recommendations in the same way shareholder advisory services such as Glass Lewis and Institutional Shareholder Services (ISS), a lack of board diversity has been noted against the election of each company's nomination committee chairs.

Reportedly, IA director of stewardship and corporate governance Andrew Ninian, has said that the IA will continue to highlight companies who fall short on diversity. 'Evidence clearly shows that more diverse boardrooms make better decisions. Investors want to see greater diversity in the companies they invest in to ensure our savers and investors are getting the best returns possible…Companies need to set out how they are going to improve their gender diversity or face revolts from investors who want to see a more diverse group of people around the boardroom table' Mr Ninian is quoted as saying.

The Guardian observes that the move comes as boards have also been targeted by unions and shareholder action groups for excessive executive pay.

According to the Guardian some companies have said that they are making efforts to address the issue in response.

[Source: The Guardian 13/05/2019]

United States | Evidence of complex and 'contradictory' views on diversity (including workplace diversity)? 75% of Americans support the promotion of ethnic and racial diversity in the workplace, but don't support employers taking into account ethnicity/diversity considerations in the hiring process according to a report from the Pew Research Centre

According to research by Pew Research Centre based on a nationally representative survey of 6,637 US adults, there is evidence that Americans hold complicated and 'contradictory' views on the impact/value of diversity and how to achieve it. A high level overview of some of the findings relating to attitudes to workplace diversity is below.

Some Key Points

- **High level of support for companies promoting diverse workplaces:** Three-quarters of Americans say it is very (49%) or somewhat (26%) important for companies and organisations to promote racial and ethnic diversity in the workplace. However, white respondents were less likely than other groups to have this view. The survey found that Black respondents are particularly likely to say this is very important (67%) as compared 52% of Hispanics and 43% of white respondents. In addition, the survey found that democrats are far more likely than republicans to say it's very important for employers to promote racial and ethnic diversity in their workplace (64% of democrats as compared to 29% of republicans).
- **Few respondents support the idea of taking race or ethnicity into consideration in hiring and promotions:** Despite valuing diversity in the workplace, a majority (74%) of respondents overall, are of the view that employers should only take a person's qualifications into account when making hiring/promoting decisions, even if it results in less diversity in the workplace. The view that employers should only take a person's qualifications into account was found to be most prevalent among white respondents (78%) and Hispanics (69%); but was also found to be the view of more than half of black respondents (54%). Less than a quarter of respondents (24%) agreed that, in addition to their qualifications, a person's race and ethnicity should be considered in decisions about hiring and promotions in order to increase diversity. Republicans were found to be much more likely (90%) than democrats (62%) to say a person's race and ethnicity shouldn't be a part of hiring and promotion decisions.

Commenting on the study, Quartz suggests that the wider implication of the findings is that most Americans believe achievement in their education system and the labor market is sufficiently based on merit, despite evidence to the contrary, to justify not to taking into account ethnicity/diversity considerations.

[Sources: Quartz 09/05/2019; Pew Research Center report: Americans see advantages and challenges in country's growth racial and ethnic diversity 08/05/2019]

Remuneration

United States | ISS update on trends in US director pay — ISS found that pay levels are generally increasing, but argues that investors view the increases as reasonable given increased demands on directors

According to Institutional Shareholder Services (ISS), US director pay has increased across all market segments in recent years, though there continues to be variation by industry sector. ISS comments that the increases are viewed as reasonable by investors due to the increased commitment by directors to their oversight roles, increased/increasing investor expectations and in some industries increased regulatory demands.

Some Key Points

- **The larger the company the more directors are paid:** ISS found that director compensation correlates to company size, as larger companies generally pay higher director fees. At approximately $285,000, the median total annual director compensation of S&P 500 companies is 63% higher than the median total director pay for the rest of the Russell 3000.
- **Directors' fees have increased overall:**
  - Based on 2019 meeting data, median director compensation for all Russell 3000 companies increased by 2.7% compared to last year from approximately $193,000 to $198,000.

- Smaller companies (Russell 3000 constituents outside the S&P 1500) saw the highest rate of increase in median pay at 5.2% compared to last year, while the change in median non-executive director pay in the S&P 500 stood at 2.9%.
- The compound annual growth rate of director compensation during the past seven years ranges from 3.2 percent for the S&P 500 to 4.5 percent for Russell 3000 non-S&P 1500 companies.

ISS comments investors view the increase in pay as reasonable given the increased demands placed on boards and directors in recent years.

- **Director compensation was found to vary by industry sector:**
  - Among S&P 500 companies: pharmaceutical and biotechnology firms were found to offer the highest director pay packages with a median pay figure of approximately $347,000. Technology firms, median companies, and energy firms were identified among the top paying industries with median director pay figures above $300,000. ISS suggests that the higher director pay figures for these industries may be due to the specialised skills and expertise that are associated with these businesses.
  - Retailing, consumer durables and apparel, real estate, and banks rank at the bottom of list; however, even for these industry groups, median director pay levels are above $240,000.
- **Director Equity Compensation**: Russell 3000 companies pay approximately 60% of total director compensation in equity. Larger companies are slightly more likely to pay directors in stock. To support the alignment of director's interests with those of shareholders through equity ownership, many companies have adopted director ownership guidelines and at large firms, this has become standard practice.
- **Director Pay and CEO Pay:** Director pay levels generally correlate with CEO pay, since both figures are typically determined by the size and complexity of the company.

[Source: The Harvard Law School Forum on Corporate Governance and Financial Regulation 06/05/2019]

United States | (Most) white women are blind to the racial pay gap? A US poll has found that most white women believe there is a gender pay gap but don't believe they're paid more than non-white women, despite evidence to the contrary

According to a Morning Consult/ASCEND poll, most white women believe there is a gender pay gap but less than half believe that there is also a racial pay gap ie that they are paid more than non-white women for the same work.

- **Most women believe there is a gender pay gap:** 67% of women (including 66% of white women), in the April 17-20 Morning Consult/ASCEND poll agreed that women are paid less than men for doing similar work. The article points out that this is consistent, with a March study from Glassdoor Economic Research that found women earned 95.1 cents for every dollar earned by men with the same job title, employer and location.
- **Far fewer respondents believe that there is a racial pay gap between white women and non-white women.** When asked whether non-white women are paid less than white women for doing the same work, only 39% of women overall and 34% of white women agreed that this is the case. The article points out that US Labor Department data shows that median earnings among women of colour are lower than those of white women.
- **Less support among white women for diversity centred policies:** Asked in the poll how helpful certain policies would be in supporting women interested in reaching executive positions, white women were less likely to characterise policies taking diversity into consideration eg making top executives' compensation dependent upon more diversity in leadership (52%) and mandatory diversity requirements within a company (52%) as helpful. They were far more likely to support policies that don't mention diversity eg mentorship programs with top executives (67%) and legislation to ensure men and women are paid equally for similar work (67%).

Implications?

The article quotes Ella Bell Smith, a professor of business management at Dartmouth College's Tuck School of Business as commenting that the findings suggest that the lack of acceptance of the racial (as well as gender) pay gap is a barrier to progress on the issue. It is a misbelief among many white women, Professor Smith is quoted as saying, that their experiences are similar to those of non-white women because they share gender. Such misconceptions can freeze any sort of discourse around pay at the intersection of race and gender.

Chandra Childers, a study director at the Institute for Women's Policy Research is reportedly of a similar view, commenting that the 'pay gap is a racial gap' and that the lack of acknowledgement by white women, and by organisations, prevents progress on policies that could assist non-white women.

[Source: Morning Consult/ASCEND poll 10/05/2019]

Institutional Shareholders and Stewardship

Speaking at the ACSI annual forum Shadow Assistant Treasurer Andrew Leigh said (among other things) that Labor supports the introduction of CEO/worker pay ratio reporting and the integration of climate risk considerations into investment decision making

In his address to the Australian Council of Superannuation Investors (ACSI) Annual Forum, Shadow Assistant Treasurer Andrew Leigh said among other things, that the Labor party supports some of ACSI's proposed reforms, including the integration of climate risk considerations into investment decision making and disclosure of CEO pay (vs worker pay).

Some Key Points

- **CEO pay:** Noting the disparity between CEO pay and worker pay, Mr Leigh reiterated that if elected, the Labor party plans to require large listed firms to publish the ratio of CEO pay as compared with the pay of the median worker in that firm. This is designed to 'promote transparency and help lift the pay of workers' and will not be 'onerous' for firms given they already keep significant data on employee pay Mr Leigh said. Mr Leigh added that the measure has received support from investors, unions and some CEOs.

[Note: Requiring disclosure of CEO pay ratios to shareholders is among the policy measures put forward by ASCI as part of its broader policy response to the Financial Services Royal Commission. See: Governance News 01/05/2019]

- **Climate Change:** Mr Leigh said that Labor plans to: a) reduce emissions in line with what the Climate Change Authority says is required to meet Australia's international commitments; and b) that Labor supports superannuation trustees taking into account climate risk when making investment decisions. Mr Leigh said that Labor considers this to be consistent with the best interests duty of superannuation trustees.

[Note: As part of its broader response to the Financial Services Royal Commission, ACSI has recently put forward two proposals to strengthen stewardship: 1) explicit regulatory recognition (by the Australian Prudential Regulation Authority (APRA)) of the importance of ESG issues in the formulation of investment strategies; and 2) a review of the regulatory framework for stewardship (including consideration of: the appropriate minimum standards and reporting, the regulatory framework and a stewardship code for institutional investors). See: Governance News 08/05/82019]

- **Increased transparency:** Mr Leigh outlined a number of measures to increase market transparency including: the establishment of a register of beneficial ownership, gender pay gap reporting (for large businesses); and the development of 'appropriate guidelines' for investments in 'tax havens'.
- **Investment to support new market entrants:** Mr Leigh said that the Labor party is a 'pro-market party that wants the best for the economy: not just today's businesses, but tomorrow's start-ups'. He said that this would be achieved through investment in key areas including: education, raising apprenticeship rates, investing in infrastructure projects and technology, and institutions.

- **Labor's response to the Financial Services Royal Commission recommendations:** Mr Leigh reiterated a number of actions the Federal Labor Party plans to implement (if elected) in response to the Financial Services Royal Commission recommendations. Mr Leigh said that the Federal Labor Party plans to:
  - legislate a flat upfront commission rate to avoid mortgage brokers' advice being conflicted by the rate of the commission
  - prohibit trail commissions, abolishing them on new loans from 1 July 2020
  - ban volume-based commissions and incentives
  - require the big four banks, ASIC and APRA to develop implementation plans by 1 August 2019, and publicly report to the Royal Commission Implementation Taskforce every six months on their progress in implementing recommendations
  - require the CEOs of the four major banks and the Australian Banking Association to report every six months to the House of Representatives Economics Committee
  - In addition, Mr Leigh said that 'Labor will implement in full the other 75 recommendations of the Royal Commission'
- **Proposed tax reform:** Mr Leigh said that the Federal Labor Party's focus is on 'closing tax loopholes' (tax expenditures) for example by: prospectively restricting negative gearing to new built homes; prospectively halving the capital gains tax discount from 50 to 25%; taxing trust distributions to adult beneficiaries at a minimum tax rate of 30%.

[Source: Shadow Assistant Treasurer Andrew Leigh, speech to the Australian Council of Superannuation Investors Annual Conference 08/05/2019]

Failure to take climate risk into account is breaking the law? ACSI president and Australian Super head Ian Silk has reportedly called on industry to integrate ESG considerations into investment decision making

Context: As part of its policy response to the Financial Services Royal Commission, The Australian Council of Superannuation Investors (ACSI) recently put forward two proposals to strengthen investment stewardship. The proposals are: 1) explicit regulatory recognition (by APRA) of the importance of environmental, social and governance (ESG) issues in the formulation of investment strategies; and 2) a review of the regulatory framework for stewardship (including consideration of: the appropriate minimum standards and reporting, the regulatory framework and a stewardship code for institutional investors). See: Governance News 08/05/2019.

Failure to integrate ESG considerations into investment decision making is contrary to the interests of members? Reportedly, in his address to the Australian Council of Superannuation Investors (ACSI) annual conference, head of Australian Super and ACSI President Ian Silk, said that failure to consider environmental, social and governance (ESG) risks when investing members' retirement savings is a breach of superannuation trustees' duty to act in the best interests of their members and as such, is a breach of the law.

Social, ideological or political activism? Mr Silk reportedly acknowledged that his views are not universally shared, but rejected arguments that integrating ESG considerations into business and investment decisions 'is a form of social, ideological or political activism'. Reportedly Mr Silk said that there is ample evidence to show that companies with poor ESG practices and performance don't do well in the long term and that 'failure to properly manage ESG risks can lead to reputational damage, regulatory scrutiny, civil and criminal litigation, profit downgrades and ultimately poor investment results'. Mr Silk reportedly went on to say that if companies or their investors ignore ESG factors it would be to the long-term detriment of the economic value of those companies. On this basis, he reportedly argued that taking steps to improve companies' ESG performance is in members' best interests.

ACSI will continue to advocate for the integration of ESG factors into investment decision making: Mr Silk is quoted as stating that 'ESG can no longer be considered a "nice to have"…that's why ACSI and our members plan to continue and grow our focus on ESG integration…We will be more demanding, we will be more vocal, we will call out poor performers and deficiencies in the system…So, for all the reasons I've mentioned and more ESG integration is our lane and we're not pulling over, because we're needed more than ever now to help safeguard the long-term value of investments on behalf of our members.'

[Source: Investment Magazine 08/05/2019]

Too far? The Australian reports that there are a range of views on the role investors should play in holding boards to account/applying pressure on board decision making

The Australian reports that there were a range of views expressed at the recent Australian Council of Superannuation Investors (ACSI) Annual Conference concerning the role of investors and the role of boards and the efficacy (or not) of current accountability mechanisms.

- **Operation of the two strikes rule:** Commenting on the operation of the two strikes rule, UniSuper CIO John Pearce reportedly said that it is already a powerful instrument which should not be 'overused' by investors. 'We need to be careful about overreach … We shouldn't be transferring power to people that shouldn't have the power…We need to let directors govern. I am worried about the pendulum swinging too far the other way' he is quoted as stating.
- **Encroaching on board decision making?** Reportedly Mr Pearce said that directors need to be allowed to govern their companies and is wary of handing asset owners more power to hold boards accountable for their actions. Commenting on the role of investors in driving change on environmental, social and governance (ESG) issues, Mr Pearce was reportedly not supportive of what he reportedly views as activism, 'You get the sense that the ESG (environmental, social and governance) warriors think it is the only thing that is important when running a company' he is quoted as stating. Commenting more directly on ACSI's proposal to require a binding shareholder vote on remuneration policy every three years Mr Pearce reportedly questioned whether the change would achieve better results. 'What are we trying to achieve here? By handing asset owners a bigger stick, are we going to get better engagement with companies? At UniSuper we have fantastic engagement with companies. We have seen changes made by companies because of our engagement behind closed doors.'

[Note: As part of its broader policy response to the Financial Services Royal Commission, the Australian Council of Superannuation Investors (ACSI) released a number of proposed reforms, including (among others) a number of measures to increase corporate accountability by: a) requiring a binding shareholder vote on remuneration policy every three years; b) requiring disclosure of CEO pay ratios to shareholders; c) introducing annual director elections; and d) permitting non-binding (advisory) shareholder resolutions. See: Governance News 01/05/2019.]

- **Duty to take into account ESG considerations?** By contrast, media reports suggest that there is also support for the view that investors should be prepared to pressure companies on ESG issues.
  - The Australian reports that International Trade Union Confederation General Secretary Sharan Burrow told the conference that investors needed to be prepared to push companies to address growing global inequality and violations of human and labour rights.
  - Separately, ACSI President Ian Silk is quoted as calling on investors to integrate ESG considerations into investment decisions.
  - The AFR reports that Fiona Reynolds (head of the United Nations body that champions responsible investing, the Principles for Responsible Investment (PRI)), has said that superannuation funds have a role to play in pressuring companies on environmental, social and governance (ESG) issues (including paying their fair share of tax, worker safety, income equity and climate risk) in the best interests of members. 'You consider the ESG factors because you believe that they have a strong impact on your returns. These issues are going to affect your investment…There's increasing awareness among investors around the world of the externalities. And if they don't think about them, they'll end up paying for them anyway' Ms Reynolds is quoted as saying. Reportedly Ms Reynolds called on Australia's 140 Australian members to step up their efforts, especially on social issues.

[Sources: [registration required] The Australian 09/05/2019; Investment Magazine 08/05/2019; [registration required] The AFR 09/05/2019]

In Brief | Pressure building? The Australian reports that $97 billion Norwegian pension fund giant KLP has sold its stakes in BHP, South32, Origin Energy and AGL Energy following a decision to cut its exposure to coal. The Australian comments that the move reflects a growing shift among pension and sovereign wealth funds to reduce their exposure

[Source: [registration required] The Australian 09/05/2019]

Meetings and Proxy Advisers

Recent AGM results: Barclays, General Electric, Rio Tinto, QBE

- **General Electric:** The WSJ reports that shareholders rejected a proposal to appoint an independent Chair and supported the company's executive compensation plans at the recent AGM but that both resolutions received high protest votes (due, the WSJ suggests to dissatisfaction with the company's performance over the past two years, which some shareholders believe the board should have been able to foresee/manage better). More particularly, the WSJ reports that about 30% votes cast were opposed to GE's executive-compensation plans and about 27% were in favour of separating the roles of chairman and chief executive officer. The WSJ reports that questions were asked concerning continued supplemental pension payments to former CEO Jeff Immelt in light of the firm's poor performance. In response to a call from the floor for the company to halt these payments, current CEO Larry Culp reportedly said, 'If serious misconduct is uncovered, clawbacks would be in order' but that the bar for clawbacks is high — beyond business decisions that did not go as anticipated. The WSJ notes that the GE board has been substantially renewed over the past two years, since the departure of former CEO Mr Immelt.

[Source: [registration required] The WSJ 08/05/2019]

- **Barclays:** Sherborne Investors' (Edward Bramsons') campaign for a board seat on the Barclay's board has reportedly been unsuccessful. Reportedly Mr Bramson received less than 13% support for his election to the board. Activist Insight attributes the lack of support for Mr Bramson to investors' opting to give incoming Chair Nigel Higgins a chance to deliver improvements. Mr Bramson reportedly said he intends to maintain pressure on the bank to improve performance (including advocating a change in strategy) and that Shereborne will continue to engage with Barclays (though engagement has not delivered results to date). Mr Bramson reportedly declined to provide further details of his strategy. Reportedly, before the shareholders' meeting, reports circulated that the Investor Forum, had also raised concerns about Barclays' strategy, though no details are known.

[Source: Activist Insight 02/05/2019]

- **Shareholder climate resolutions at QBE and Rio Tinto**: Climate related shareholder resolutions (sponsored by Market Forces) at QBE (seeking QBE set targets for reducing its investment and underwriting exposure to coal, oil and gas) and at Rio Tinto (seeking Rio Tinto set targets to reduce carbon emissions) were not carried. In order to be considered at the meeting, both shareholder climate resolutions required that a special resolution to amend the constitutions in each case (to enable shareholders to propose non-binding advisory resolutions) first be passed. In both cases, neither the constitutional amendment, nor the climate related resolutions had board support and the special resolutions seeking constitutional amendments were not carried receiving less than 3% support in each case. The climate resolution at QBE received 7.8% proxy support. The Rio Tinto climate resolution received 6% support. In a statement, climate group Market Forces commented that the result at QBE was 'disappointing' and an indication that 'major investors, such as some super funds, are still not prepared to take a big-picture view of the climate crisis, despite claiming to do so'. However, Market Forces also noted that the QBE board indicated (over the course of the AGM) that it was open to changing its climate policy. In a separate statement, Market Forces called on super fund members to petition their superannuation funds to support upcoming climate votes.

[Note: Among other proposed reforms aimed at enhancing corporate accountability, the Australian Council of Superannuation Investors (ACSI) has recently called for non-binding (advisory) shareholder resolutions to be permitted. See: Governance News 01/05/2019]

*[Sources: QBE ASX Announcement 09/05/2019; Market Forces 09/05/2019; **14/05/2019;** **Rio Tinto** ASX Announcement: Chair's address 09/05/2019; Results of AGM 09/05/2019; Market Forces media release 09/05/2019; [registration required] The AFR 08/05/2019]*

Germany | Proxy advisers ISS and Glass Lewis have reportedly taken the unusual step of advising shareholders to vote against ratifying the Deutsche Bank board ahead of the 23 May AGM

According to media reports, Institutional Shareholder Services (ISS) and Glass Lewis have both recommended shareholders vote against 'discharging' Deutsche's board (the vote of confidence under the German corporate code), at its AGM on 23 May. This is reportedly the first time ISS has made a recommendation of this kind. ISS and Glass Lewis have reportedly cited a series of recent issues (for example reputational damage/financial loss (40% loss of value over a 12 month period) as a consequence of flawed risk controls including 'know your customer' and anti-money laundering controls) to justify their recommendations. Deutsche Bank has reportedly said that though it acknowledges there is 'still work ahead', it has 'significantly improved' its risk and control systems over the past three years and will continue to do so. In addition, Deutsche reportedly said defended its financial stability, arguing that share price alone was not an accurate indicator.

[Source: Bloomberg 08/05/2019; CNBC 09/05/2019]

Disclosure and Reporting

The Greens have released a new policy to introduce carbon risk reporting for large companies ahead of the Federal Election

Ahead of the upcoming Federal election on 18 May, the Greens have launched a new policy to:

1. **Introduce mandatory carbon risk disclosure requirements for large companies, climate-exposed companies, and the financial sector**. The Council of Financial Regulators would be tasked with developing standards for carbon risk reporting by 1 January 2020, consistent with the Task-Force on Climate-Related Financial Disclosure recommendations (TCFD recommendations).
2. **Introduce an explicit duty for directors of listed companies and large proprietary companies to take into account and to disclose carbon risk as part of their responsibilities** for the management of a corporation.
3. **Include a report on the economy-wide level of climate risk in the Federal Budget.** The Greens would require that the Federal Budget include within the Statement of Risks, a section on climate risk outlining the risk borne by both the public sector and the private sector across the entire economy. The reporting in this section would be consistent with the standards developed by the CFR for the private sector, and include detail on the economy wide levels of transition risk and physical risk, as well as the results of economy wide scenario analysis.

The Greens argue that despite pressure from investors, Australian companies are either not reporting on climate risk 'or not doing it very well' and that the proposed policy would address this by creating uniform and mandatory carbon risk reporting requirements and by enabling 'the collective will'.

[Source: [accessed via LexisNexis Capital Monitor: Greens media release, Adam Bandt 09/05/2019]

Related News: The AFR quotes Federal Labor climate and energy spokesperson Mark Butler as saying that his party will support the push for companies to disclose climate risks to shareholders, adding that if elected to government, the Labor Party will require government agencies to meet the same reporting guidelines. 'Businesses are increasingly expected to [abide] by the TCFD [Taskforce on Climate-related Financial Disclosures recommendations] and I think there will be implications for how government develops policy as well' he is quoted as stating. Separately,

[Source: [registration required] The AFR 13/05/2019]

In Brief | The SMH reports that Australian financial regulators (ASIC and APRA) have renewed calls at the ACSI annual conference, for improved climate risk disclosure on the basis that climate risk must be considered a major financial risk. 'We view some climate risks as distinctly financial in nature ... we

view those risks as "material, foreseeable and actionable now"' APRA's Geoff Summerhayes is quoted as stating

[Sources: [registration required] The SMH 08/05/2019]

Regulators

ASIC has announced the launch of three regulatory technology (regtech) events in conjunction with industry and others to promote and encourage regtech adoption in the Australian financial services sector

The Australian Securities and Investments Commission (ASIC) has announced the launch of three regulatory technology (regtech) events in conjunction with industry and others to promote and encourage regtech adoption in the financial services sector. ASIC said that these events are an opportunity for regtech startups, scaleups and financial services organisations' inhouse development teams to demonstrate how their solutions can:

- monitor, identify and analyse financial advertising promotions to determine compliance (Monitoring Financial Promotions: Demo and Symposium in Sydney on Friday 2 August).
- improve the detection of problematic financial advice in datasets (Financial Advice Files: Demo and Symposium in Sydney on Thursday 22 August).
- demonstrate the capabilities, benefits and costs of applying Voice Analytics & Voice-to-Text (VA&VT) Research and Analysis to regulatory activities (VA&VT Symposium in late 2019).

ASIC Commissioner John Price said that regtech has potential to assist organisations to build a culture of compliance, identify learning opportunities and save time and money relating to regulation. 'Regtech is something we are keenly interested in, both as a consumer of products and a facilitator of engagement more generally to ensure innovation in this area is utilised' he said.

ASIC also said that it is undertaking a regtech trial to explore how it can communicate the application of its financial services and credit licensing requirements via a Licensing Technology-Assisted Guidance (TAG) Tool (AusTender now closed; findings to be shared at a fourth symposium later in 2019).

ASIC states that details for the VA&VT and TAG Tool symposiums will be released closer to the date. Both symposiums will be based on trials ASIC is currently running with regtech companies selected via AusTender.

[Sources: ASIC media release 10/05/2019; Investor Daily 13/05/2019]

United States | Bloomberg reports that SEC looks to be on pace to file more enforcement actions than last year despite the month-long shutdown at the outset of the year

Bloomberg Law reports that a study by Georgetown University Law Professor Urska Velikonja has found that despite a one month long government shutdown the Securities and Exchange Commission (SEC) is on track to file more enforcement actions than last year. The government shutdown ran from 27 December to 25 at the Securities and Exchange Commission (SEC), which operated under a skeleton staff during the period.

[Note: It does not appear that the study referred to by Bloomberg has been publicly released as yet though it was released to Bloomberg]

Some Key Points

- **40% increase in enforcement actions:** According to Bloomberg's report, SEC brought 217 stand-alone enforcement actions in fiscal 2019's first half, which ended March 31. This represents a 40% increase on the 155 cases the SEC filed in the same period last year. It is also reportedly, the third highest total for the first six months of a fiscal year since at least 2007. The SEC will need to file more than 273 stand-alone actions in the second half of this fiscal year to exceed 2018's tally of 490.

- **Total monetary penalties for the first half of fiscal 2019 also were reportedly the highest** for the first six months of a fiscal year since 2017: Reportedly SEC issued $807.3 million in fines in the first half of fiscal 2019, compared to $132 million in 2018 and $1.5 billion in 2017.
- **Most of the penalty money so far this year has reportedly come from firms, not individuals** according to Bloomberg's report. Individuals received $19.4 million in fines in the first six months of fiscal 2019, while firms received $788 million. Reportedly, the sum for individuals is the lowest since the first half of fiscal 2009 between the George W Bush and Barack Obama administrations. Bloomberg quotes Professor Velikonja as commenting that this 'does undercut the claim by the commission that it is aggressively targeting individuals…It is not going after more individuals and they are not paying more.'
- **Reportedly, SEC brought almost three-quarters of its cases in December and March**:
  - In December, SEC reportedly filed 54 cases (which is more than the amount brought in any December since at least 2009). The high volume is attributed to the threat of the shutdown and the departure Kara Stein from the Commission.
  - In March, SEC reportedly filed 104 cases. Professor Velikonja attributes the high volume of cases to the SEC's Share Class Selection Disclosure Initiative that led to actions against 79 investment advisers that month.

Professor Velikonja is quoted as stating that at worst the shutdown 'put off some enforcement actions that otherwise would have been filed right after the new year'.

Bloomberg writes that SEC, which only releases enforcement statistics that cover full fiscal years, declined to comment on the findings, but observes that SEC officials have 'frequently downplayed statistics as a measure of the agency's success' in the past.

[Source: [registration required] Bloomberg 05/05/2019]

Financial Services

Progress update on embedding customer focus: The ABA has released a post implementation review into the impact and effectiveness of customer advocates two years after the initiative was implemented

Overview | Deloitte report: Customer Advocate Initiative: Post implementation Review May 2019

Following the introduction of customer advocates into Australian banks (that are members of the Australian Banking Association (ABA)) in 2016, the ABA engaged Deloitte to undertake a post-implementation review of the initiative to assess the extent to which it has been implemented as well as its impact and effectiveness in embedding customer focus. The report also includes sixteen recommendations for banks and the ABA to consider to enhance the impact of the initiative. A high level overview of some of the key findings and recommendations is below.

Some Key Findings

- Deloitte found that there is variation in the way in which the customer role has been implemented in different organisations, though the role included some form of complaints 'appeal' function in each case.
- In many cases, the role encompassed much broader responsibilities especially in larger and mid-sized banks including: preventative and systemic change and ensuring that the bank is taking action to protect and better serve vulnerable customers.
- Deloitte found that the scope of the customer advocate role is expanding over time. Deloitte suggests that this is due to organisations becoming aware of the potential value of having a role dedicated to approaching issues from a customer perspective from a change standpoint.
- Deloitte found that Consumer Groups, bank staff, and bank customers believed that the appointment of customer advocates is a positive initiative, though overall external stakeholders also felt that there is opportunity to improve transparency and communication around the role, the work being done and the changes being implemented.

What does stronger implementation look like?

Deloitte identifies the following as key features of stronger implementation.

- **Highly visible to the CEO/board:** The CEO and the board have high visibility of the role and clearly support the role
- **Customer advocate is skills/senior:** The customer advocate is senior with strong influencing skills, conviction, judgment and resilience. The customer advocate is also able to recognise that the 'fairest outcome may not always deliver what the customer wants'
- **The customer advocate is highly visible within the organisation**. This might be enhanced/supported by internal communications programs
- **The role is appropriately resourced and funded** and there is flexibility in resourcing during periods of increased workload
- **The role has a broad mandate** (beyond resolution of complaints issues) which may encompass: preventing conduct issues and influencing the organisation's products, services and processes to focus on delivering fair outcomes for customers
- **The role has broader influence:** Where the role as a narrower mandate (resolution of customer complaints) the role nevertheless has broader influence and impact through strong collaboration with other related functions (eg complaints management, data analysis) inside the organisation with a focus on customer outcomes

Examples of weaker implementation

Deloitte identifies the following as examples of weaker implementation. key features of stronger implementation.

- **Just 'lip service':** Deloitte observed some cases in which there was poor organisational support for the customer advocate role in practice (including a lack of senior management buy in). Deloitte notes that two of the banks it was 'most concerned about' in relation to this issue have since reported that they have commencing reviewing or implemented improvements in this area
- **Poor ownership (by management) of the resolution of issues** identified by the customer advocate
- **Insufficient resources** to enable the customer advocate to fulfil their mandate
- **Falling down the list of priorities:** In some instances 'prolific organisational change' and intense external pressure (eg the Financial Services Royal Commission) have impacted implementation of a number of changes, including implementation of the customer advocate role. In some cases, Deloitte notes, these factors have allowed the customer advocate role to gain 'rapid visibility and traction' by providing a 'burning platform'
- **Lack of emphasis on ensuring fair treatment of customers:** Deloitte observed that in some instances there was a blurring between customer experience and customer outcomes in the customer advocate role which served to 'de-emphasise' the priority of ensuring fair treatment of customers
- **Lack of clarity in customer communications about IDR and availability of EDR:** Deloitte found that in many internal dispute resolution (IDR) communications to customers, did not make clear that customers would still be able to access external dispute resolution (eg the Australian Financial Complaints Authority (AFCA)) for a period, regardless of whether they elected to escalate their complaint to the customer advocate
- **Deloitte found that there is low external awareness of the role.** For example, only larger consumer groups were aware of customer advocates (mostly from the larger banks) and financial counsellors were largely unaware of the role or how to access customer advocates

Impact of customer advocates?

Some areas where customer advocates were found to have made an impact include the following.

- **Resolution of longstanding or complex individual customer complaints:** According to the report, external stakeholders said that they valued being able to refer individual customer issues to the customer advocate and achieved a good outcome when they did
- **Deloitte identified a number of examples changes/improvements to support vulnerable customers** that were driven by the Customer Advocate such as establishing meaningful dialogue with consumer groups and seeking their insights to assist in targeting/improving bank initiatives
- **Progress on addressing 'systemic issues':** Deloitte writes that external stakeholders were 'encouraged' by the Customer Advocate roles that include identifying and improving systemic issues, and felt this was the most valuable element of a Customer Advocate's mandate.
- **Assisting in driving cultural change:** Deloitte writes that one senior executive said that his/her organisation had found that the customer advocate role had assisted in driving cultural change. In that instance, bank built on the customer advocate's message of fairness and understanding and used it to support a broader campaign to shift the culture of the organisation towards focusing on the customer.

Snapshot: Key Recommendations

Overall, the report found that there is still work to be done in effectively empowering and embedding many of the Customer Advocate roles within the banks and includes 16 recommendations (summarised in the table below) for banks and the ABA to consider to support this.

Of these, Deloitte identifies the following as the 'most significant':

1. Recommendation 16: consideration should be given to aligning the stated purpose of customer advocate roles with the Statement of Guiding Principles in the new ABA Banking Code of Practice (the Code) to reflect a stronger focus on fair treatment of customers and achieving good customer outcomes.
2. Recommendation 6: consideration should be given to how awareness and transparency of customer advocate roles and their work/achievements can be raised among consumer groups and how interaction between these groups and customer advocates can be made easier/more accessible to a broader range of stakeholders.
3. Recommendation 15: Ensure that systemic issues raised by customer advocates receive the appropriate attention, accountability and resolution.
4. Recommendation 1: review the roles and resourcing of customer advocates on a regular basis
5. Recommendations 8 and 14: Improve communication with customers about the roles, including providing clearer contact information on websites, and better clarity about the right to access external dispute resolution (the Australian Financial Conduct Authority (AFCA)).

Further detail: Overview of the 16 recommendations

[Note: The recommendations are summarised in the report itself in a table in appendix C here]

Objective	Recommendations
Raising awareness of the role of the customer advocate	▪ Recommendation 6: The ABA should in consultation with stakeholders consider how to raise awareness of the role across consumer groups and investigate ways to improve interaction between consumer groups and customer advocates. Deloitte suggests banks will need to consider the impact on resourcing that could arise from this recommendation. ▪ Recommendation 9: Banks should consider developing an ongoing internal communications plan, refreshed on a regular basis, to promote internal awareness of the purpose of the role, and make staff aware of how the role is making a difference for customers. ▪ Recommendation 10: With respect to the complaints escalation element of the role, the ABA and banks should consider adopting common mandates, messages or

Objective	Recommendations
	escalation processes. Deloitte suggests that banks that opt not to adopt a common approach could disclose their approach on an 'if not, why not' basis to stakeholders.
Improving communication to customers	▪ Recommendation 3: Deloitte suggests banks and customer advocates should consider not using the term 'independent' in external communications about the customer advocate role to avoid potentially confusing consumers ▪ Recommendation 8: Deloitte recommends that banks should review customer communications about escalating complaints to the customer advocate to check it: a) makes clear that customers have the right to access both the customer advocate and EDR; b) clearly explains the role of the customer advocate, what support customers can expect from them and how/when to contact them; and c) is not potentially confusing or threatening for customers, for example by 'using the term lawyer'. ▪ Recommendation 12: Deloitte recommends that where customer advocate's primary means of communication with customers is in writing, the advocate should consider what opportunities there are to speak to customers personally (or over the phone) where appropriate ▪ Recommendation 14: Banks should review the information available on their websites and consider how they can enable customers to more easily identify the role of the customer advocate and when/how customers can contact them
Improving transparency, accountability and reporting	▪ Recommendation 5: The report recommends a further post-implementation review in 18-24 months and identifies issues that the review should consider. These include (among others): conducting a review of individual complaint files to test that customer advocates are performing a sufficiently detailed review of escalated complaints; testing the effectiveness of the feedback loop from the customer advocate function to the rest of the business (eg whether identified issues/recommendations made by the customer advocate have been implemented); and whether poorer practices identified in the report have been addressed. ▪ Recommendation 7: Banks/customer advocates should consider how customer advocates can more effectively provide information and transparency to external stakeholders and consider reporting externally (at least annually) on the activities and outcomes of the customer advocate. ▪ Recommendation 15: Where the Customer Advocate has identified a genuine systemic issue, and the issue is accepted by the business as problematic, banks should ensure that the issue is addressed in their formal incident or issue management process, including the allocation of clear ownership and proactive oversight of its resolution at senior levels.
Formalising governance of the customer advocate role	▪ Recommendation 1: Deloitte recommends that banks should consider the role design and resourcing of their customer advocate role, and undertake periodic reviews of both going forward. In particular, Deloitte recommends that if the role within their organisation is narrow (ie predominantly focussed on complaint resolution) banks should consider whether it should be expanded to focus on identifying systemic issues, and preventing future problems for customers. ▪ Recommendation 2: Senior executives and Boards should actively consider whether they have sufficient engagement with the Customer Advocate, and whether their actions demonstrate their ongoing support for the role and the work that the Customer Advocate is doing. Customer Advocates should ideally report to, and interact with, the Board and senior executives on a regular basis.

Objective	Recommendations
	▪ Recommendation 11: Banks that have not yet done so, should document the customer advocate's purpose, roles and responsibilities such as in a terms of reference charter or equivalent document. ▪ Recommendation 13: Banks and Customer Advocates should regularly consider whether there are potential conflicts of interest for the Customer Advocate that arise from the model, responsibilities or other factors. Where conflicts/potential conflicts are identified, the impact should be considered and if appropriate, changes should be implemented to address the issue. The effectiveness of these controls should also be periodically reviewed.
Review of the ABA Guiding Principles (which inform the customer advocate role)	▪ Recommendation 4: The ABA should consider whether the reference in the Guidance Principles to designing and implementing mechanisms to measure the effectiveness of the customer advocate role should be reworded. ▪ Recommendation 16: The ABA should consider reviewing and amending the Guiding Principles to: a) align them with the Statement of Guiding Principles in the Banking Code of Practice, in particular, objectives related to fairness and customer outcomes; b) streamlining them to remove overlap and clarify the difference between elements of the role that are expected, and those that are left to the discretion of the individual bank; and c) considering whether references to 'measurement' of the Customer Advocate should be changed in light of Recommendation 4 (see above).

[Sources: ABA May Newsletter; Australian Banking Association commissioned report: Customer Advocate Initiative: Post Implementation Review May 2019]

ASIC has revoked the authorisation of 58 AFS licensees following a review

The Australian Securities and Investments Commission (ASIC) has announced that it has revoked the authorisation of 58 Australian finance services (AFS) licensees, because they were also authorised representatives of other AFS licensees.

Details

- Under section 916D of the *Corporations Act 2001* Cth, an AFS licensee cannot be the authorised representative of another AFS licensee, unless they are a general insurance underwriting agent or broker operating under a binder given by an insurer.
- ASIC investigated 65 cases where AFS licence holders had also been appointed as authorised representatives by another AFS licensee. Of the 65 cases investigated, ASIC found that 58 were in breach of the law.
- ASIC states that it is concerned that in these cases, licensees may not have appropriate compliance measures in place, resulting in potential risks to consumers eg affected clients may not be covered by an authorised representative's Professional Indemnity Insurance (PII) or membership of an External Dispute Resolution (EDR) Scheme.

ASIC's expectations

1. AFS licensees should check ASIC's professional registers prior to granting a authorisation to new representatives to ensure that they do not authorise a person or entity that already holds an AFS licence. AFS licensees are advised to adopt this practice as part of their onboarding process.
2. AFS licensees wanting to become authorised representatives must give up their licence or take necessary steps to ensure that they are not in breach of the law.

[Source: ASIC media release 13/05/2019]

APRA has written to RSE licensees reminding them of their obligations to act in members' best interests when implementing changes required under Protecting Your Super legislation

The Australian Prudential Regulation Authority (APRA) has written to Registrable Superannuation Entity (RSE) licensees reminding them that the recent passage through Parliament of the *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* will require them to implement a number of changes to address account erosion caused by excessive fees or unnecessary insurance. APRA also released a frequently asked questions document on implementing the reforms.

APRA writes that it expects that RSE licensees will: a) implement the necessary changes in ways that promote the outcomes the reforms are seeking to achieve; and b) reflect RSE's obligation to act in the best interests of members.

APRA has also written specifically to RSE licensees authorised to provide an Eligible Rollover Fund (ERF) on the implications of the fee caps and the Australian Taxation Office's (ATO's) account sweep on the future viability of ERFs, and the capacity of RSE licensees of ERFs to meet their fiduciary duties to members. APRA states that its expectation is that all RSE licensees will: a) review their policies governing the transfer of accounts to ERFs to determine whether these policies remain in members' best interests; and b) where account transfers are undertaken, RSE's ensure that account consolidation (as part of the ATO account sweep under protection your super package reforms) is not 'averted or delayed', contrary to the best interest of members.

[Sources: APRA letter to RSE Licensees 08/05/2019; Frequently asked questions 08/05/2019; [registration required] The Australian 09/05/2019]

ASIC has fined HostPlus for (alleged) misleading 'independent advice' claims

The Australian Securities and Investments Commission (ASIC) has announced that industry superannuation fund, HostPlus has paid a $12,600 Infringement Notice for allegedly misleading 'independent advice' claims in a recorded telephone message on the HostPlus' main consumer telephone number.

Further Detail: According to ASIC from July 2016 to late March 2018, Hostplus' recorded telephone message referred to a free consultation available to members with an Industry Fund Services Limited (IFS) licensed financial planner. It then referred to the advice as 'independent'.

[Note: The use of the term Independent is restricted under s923A of the *Corporations Act 2001 (Cth)*.]

ASIC says it was concerned that HostPlus and IFS were not independent of each other because HostPlus employees were appointed as authorised representatives to provide financial advice under IFS' Australian financial services license, HostPlus paid service fees to IFS for adviser services and at the relevant time, HostPlus was a shareholder of IFS' ultimate holding company.

In response to ASIC's concerns, ASIC writes that HostPlus immediately removed the use of the word 'independent' from the recorded telephone message. The payment of the fine is not an admission of a contravention of the *Australian Securities and Investments Commission Act 2001 (Cth)* (ASIC Act).

[Sources: ASIC media release 09/05/2019; Financial Standard 09/05/2019]

Change to the CBA board announced

In a short statement, the CBA announced that Sir David Higgins will retire as a non-executive director on 31 December 2019. CBA Chairman Catherine Livingstone said that Sir David's decision to retire was reflective of the time commitment required for the board and travelling to Australia when considered with his portfolio of directorships from 1 January 2020.

[Note: According to the CBA website Sir David is Chair of Gatwick Airport Ltd, which operates Gatwick Airport in the UK and a senior adviser to Global Infrastructure Partners in the US and to Lone Star Funds.]

Sir David has been a Director of the Bank since September 2014 and has been the Remuneration Committee Chairman and a Risk Committee member. Ms Livingstone expressed her appreciation on behalf of the Board, the Group's executives and shareholders: 'I would like to thank Sir David for his service, commitment and contribution to the Board.'

[Sources: CBA media release 13/05/2019]

In Brief | In a joint statement, financial regulators ASIC, APRA and the RBA have written to several financial institutions seeking assurance that they 'fully appreciate the impact and risks' associated with transitioning away from LIBOR and that they are taking appropriate steps to prepare

[Source: ASIC media release 09/05/2019]

In Brief | Financial Standard reports that the AIST wants AFCA to publicly name the most complained about superannuation funds on the basis that the information is important for consumers

[Source: Financial Standard 06/05/2019]

Accounting and Audit

New Code of Ethics for CA ANZ members: The New Zealand Regulatory Board has revised the NZ Code of Ethics to align it with the new International Code of Ethics

Chartered Accountants Australia New Zealand (CA ANZ) has announced that the New Zealand Regulatory Board has revised the NZ Code of Ethics. The revised Code is based on the recently revised International Code of Ethics issued by the International Ethics Standards Board for Accountants (IESBA).

- **Substantive changes:** The revised Code includes 'substantive changes' to: a) the conceptual framework; b) safeguards; c) conflicts of interest provisions; and d) some of the provisions that apply to members in business.
- **Application:** All New Zealand resident members are required to comply with the Code of Ethics issued by the NZRB.
- **Timeline:** The revised Code of Ethics applies on, or for periods beginning on or after, 15 June 2019 (early adoption permitted).

Members are encouraged to review the revised Code and consider how the changes will affect their activities (including threat assessments, policies, procedures (particularly those relating to engagement acceptance), and training programmes, as appropriate).

[Sources: Chartered Accountants Australia New Zealand media release 13/05/2019; Mapping table: Extant Code to Revised Code; Final Code of Ethics]

United Kingdom | The FCA has announced it has imposed sanctions against KPMG and a KPMG audit partner for misconduct in connection with KPMG's audit of the Co-op Bank

The Financial Reporting Council (FRC) has announced that it has imposed sanctions against KPMG Audit Plc (KPMG) and its audit partner Andrew Walker, following their admission of misconduct in relation to the audit of the financial statements of The Co-operative Bank plc (Co-op Bank) for the year ended 31 December 2009. The misconduct occurred shortly after the Co-op Bank's merger with the Britannia Building Society (Britannia).

Misconduct: KPMG and Mr Walker both admitted that their conduct fell significantly short of the standards reasonably to be expected of an audit firm and an audit partner in two areas: a) the audit of Fair Value Adjustments (FVAs) in relation to loans within the commercial loan book acquired from Britannia; and b) the audit of FVAs and liabilities under a series of loan notes, (Leek Notes), which were also acquired from Britannia. The misconduct in respect of these two areas included, the FRC states, failures to obtain sufficient appropriate audit evidence; failures to exercise sufficient professional scepticism and a failure to inform Co-op Bank that the disclosure of the expected lives of the Leek Notes in the financial statements was not adequate.

Sanctions

- KPMG has been fined £5 million (discounted for settlement to £4 million) and severely reprimanded. The firm will also pay £500,000 towards the FRC's costs.

- In addition, all KPMG's audit engagements with credit institutions for audits with 2019, 2020 and 2021 year ends will be subjected to an additional review by a separate KPMG Audit Quality team, who will provide reports to the FRC.
- Mr Walker has been fined £125,000 (discounted for settlement to £100,000) and severely reprimanded.

The FRC notes that it has separately considered the conduct of the CFO of the Co-op Bank. The FRC says that he has previously admitted misconduct and was excluded from membership of the ICAEW for six years.

[Sources: FRC media release 08/05/2019; [registration required] The WSJ 08/05/2019; Economia 08/05/2019]

In Brief | The AFR reports that Chartered Accountants ANZ is pushing to expand the type of work auditors carry out into areas such as ESG assurance, on the basis that the community supports the expansion. The AFR comments that the call is being made in the context of concerns by Australian and UK regulators concerning audit quality

[Source: [registration required] The AFR 08/05/2019]

In Brief | APRA has updated the Approved Audit Report Form for superannuation funds for reporting periods ending on or after 30 June 2019 to reflect language recommended by the Auditing and Assurance Standards Board (AUASB) and include a greater focus on 'controls' in Part 3B of the Form, now titled 'Controls and Compliance'

[Source: APRA media release 14/05/2019]

Risk Management

Cybersecurity and Privacy

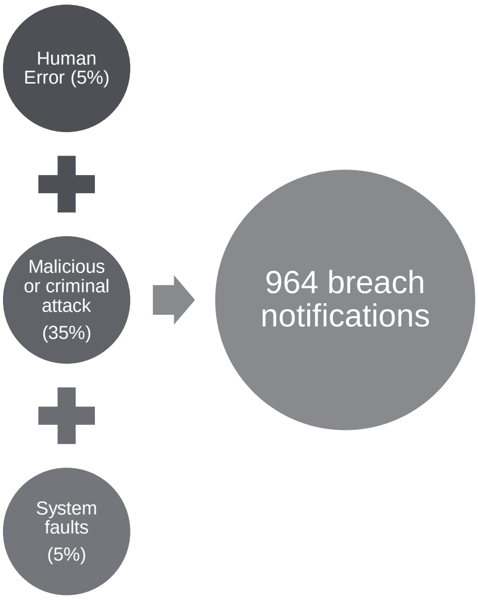
Inaugural review of the Notifiable Data Breaches scheme released: OAIC reports there was a 712% increase in notifications as compared with the 12 months prior to the introduction of mandatory reporting

Overview | OAIC Report: Notifiable Data Breaches Scheme 12-month Insights Report

To coincide with privacy awareness week, the Office of the Information and Privacy Commission (OAIC) has released a report based on data from the first twelve months since mandatory notifiable data breach (NDB) rules came into operation. The report identifies the reasons data breaches occurred, and how organisations can improve their security posture and processes to minimise the risks of future breaches.

Overall assessment: According to OAIC the results indicate that the NDB scheme is 'working as intended to improve transparency and accountability, incentivise improvements to organisations' security posture, and give consumers more information to act to prevent harm'. OAIC adds however that there is room for improvement including the need for better training and systems, and 'putting the consumer first in any response'.

Some Key Points



- **Strong compliance:** There were 964 breach notifications under the Notifiable Data Breach (NDB) scheme from 1 April 2018 to 31 March 2019. This represents a 712% increase in the number of notifications received as compared with the previous 12 months under the voluntary scheme. The uptick in the number of reported breaches following the introduction of mandatory reporting is consistent, OAIC states, with overseas trends and indicates that many entities are complying with their notification obligations.
- **86% of breaches during the period involved contact information disclosure**
- **The majority of breaches (83%) affected fewer than 1000 people**
- **Key cause of breaches?** Malicious or criminal attacks were the main sources of data breaches over the first twelve months of the NBD scheme accounting for 60% of NBD breaches. The report identifies phishing and spear phishing (153 breaches) as the most common and effective methods by which entities are being compromised
- **Human error accounts for 35% of breaches (overall) but the percentage is higher in some sectors:** 35% of data breaches across all sectors involved human error (eg through unintended disclosure of personal information or the loss of a data storage device). However, human error was the leading cause of data breaches in the health sector (accounting for 55% of breaches) and also accounted for 41% of breaches in the finance sector. OAIC suggests that this is likely a reflection of the high‑volume data holdings in these industries and may also indicate comparatively mature processes for identifying and reporting data breaches as both sectors face strong regulatory scrutiny around data protection and the costs associated with data breaches may also be higher.
- **Unknown causes?** In 28% of cases, credentials were obtained by unknown means (ie the notifying entity is not aware of how the credentials were obtained)

How entities can reduce the risk of credential compromise: The report suggests that entities can reduce the risk of credential compromise by: a) educating users on how to detect phishing emails b) implementing multi‑factor authentication; c) implementing anti‑spoofing controls (such as DMARC or SPF) and; e) educating users about password re‑use and security measures (for example, password managers and services such as 'Have I Been Pwned' to detect compromised accounts).

OAIC expectations?

OAIC expects 'organisations and agencies to act on the risks highlighted by these reports — whether or not they were directly affected — and take steps to prevent a similar breach of Australians' personal data.' In addition, OAIC states that it expects entities to employ the best practice tips set out in the report.

Five best practice NBD tips for entities: 1) implementation of a dedicated training program to ensure employees (and contractors) are trained on how to detect and report email based threats; 2) all entities should prioritise investments in improving their overall security posture in line with known security risks. Where necessary, they should engage expert security advice; 3) a data breach response plan should be in place and regular data breach simulations should be conducted to test it; 4) 'thoughtful' assessment processes should be implemented to guard against notification fatigue/inertia; and 5) taking steps to ensure clear communication post-breach. Emerging best practice by entities in the past year have included establishing and maintaining microsites and setting up support lines to provide customers centralised channels to ask questions and find out what they can do to reduce harm.

[Note: From 1 July this year, APRA-regulated entities will be required under Prudential Standard CPS 234 on Information Security (Standard), to ensure their resilience against information security incidents. For an overview of the implications for boards, see: New board requirements and responsibilities: information security 02/05/2019]

[Sources: OAIC newsletter 13/05/2019; OAIC report: Notifiable Data Breaches Scheme 12-month Insights Report 13/05/2019; MyBusiness 13/05/2019]

Climate Risk

Landmark climate case? A group of eight Torres Strait Islanders claim climate change inaction violates their human rights and have called on the Australian government to reduce emissions and invest in defences to protect their lands against rising sea levels

A group of eight Torres Strait Islanders, supported by the region's land and sea council Gur A Baradharaw Kod (GBK) and represented by lawyers for ClientEarth, have filed a complaint against the Australian government with the United Nations Human Rights Committee.

Impact of failure to act on climate change: The group lives on the low-lying islands of the Torres Strait. They allege that failure to take action on climate change has intensified cyclones and caused sea levels to rise flooding homes and roads, turning drinking water brackish and eroding sacred sites. One of the complaint authors and sixth-generation Warraber man, Kabay Tamu, said: 'We're currently seeing the effects of climate change on our islands daily, with rising seas, tidal surges, coastal erosion and inundation of our communities. We are seeing this effect on our land and on the social and emotional wellbeing of our communities who practice culture and traditions'.

The complaint alleges that the effects of Australia's insufficient plans to reduce greenhouse gas emissions and its failure to fund coastal defences (to protect against rising sea levels) constitutes a violation of their human rights (including their right to maintain their culture).

Set emissions targets/invest in coastal defences: The complaint asks for the UN committee to find that international human rights law means that Australia must increase its emission reduction target to at least 65% below 2005 levels by 2030, increasing to net zero by 2050, and phasing out coal. The group is asking for the Australian government to act to on carbon emissions and also to build coastal defence measures to ward off rising sea levels.

Petition calling for change: A petition, calling on the government to act has also been launched. The text reads: 'Prime Minister, I call on you to commit the Australian government to doing everything it can to support the people of the Torres Strait with the resources they need to protect the islands from climate change, and to mobilise Australia to pass laws to reduce greenhouse gas emissions in line with its commitments to a 1.5 degree target under the Paris Agreement'.

Broader implications? According to ClientEarth the complaint is the first climate change action brought against the Australian government based on human rights and the first legal action worldwide brought by inhabitants of low-lying islands against a nation state. While the UN cannot force Australia to take action, the group hopes that the case may increase pressure on the government and on other governments to do so.

The New York Times quotes John Knox, a professor of international law at Wake Forest University and a former special rapporteur on human rights and the environment to the United Nations as commenting that if successful, the case may have broader implications and 'would really break new ground internationally'.

[Sources: Gur A Baradharaw Kod (GBK) petition; Client Earth media release 12/05/2019; The New Daily 13/05/2019; The New York Times 12/05/2019; The New Daily 13/05/2019]

In Brief | Net zero carbon Bill introduced in NZ: The Bill gives NZ a plan to deliver on its Paris commitment and is the first legislation in the world to make a legally binding commitment to living within 1.5C of global warming. This Bill sets targets for cutting greenhouse gas emissions into primary legislation for the first time, sets up a framework of five-year emissions budgets for achieving the targets

and establishes a new Climate Change Commission to monitor progress and hold successive governments accountable

[Sources: New Zealand Ministry for the Environment media release 08/05/2019; Prime Minister Jacinda Ardern media release: Landmark climate change bill goes to Parliament 08/05/2019; Climate Change Response (Zero Carbon) Amendment Bill: Summary; Climate Change Response (Zero Carbon) Amendment Bill; The Conversation 09/05/2019]

In Brief | The Guardian reports that Microsoft has joined BP, ExxonMobil, Shell, Total and ConocoPhillips (among others) in supporting the Climate Leadership Council's call for oil companies to be granted legal immunity from prosecution for harm caused by 'historic emissions'. The Guardian comments that legal immunity would mean a raft of climate lawsuits across the US will fail

[Source: The Guardian 02/05/2019]