

Governance News

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Top Story | Still yet to crack 30%? The latest AICD gender diversity progress report has found ASX200 boards have yet to reach the 30% female board representation target with gender diversity actually backsliding since 2018

Key Takeouts

- The latest AICD gender diversity progress report has found ASX200 boards have yet to reach the 30% female board representation target with gender diversity actually backsliding since 2018
- Commenting on the findings, AICD CEO and Managing Director Angus Armour said that the results are 'a wake-up call to directors, investors and shareholders across the ASX 200'. Mr Armour called on boards to challenge themselves to understand and address barriers to making progress on the issue, cautioning that 'the business community will continue to experience low levels of trust from the community' until progress is made.

Report Overview | AICD Gender Diversity Progress Report July to September 2019

The latest Australian Institute of Company Directors (AICD) Gender Diversity Report has found that as at the end of September 2019, the percentage of women on ASX 200 boards had gone backwards, falling from 29.7% at the end of 2018 to 29.5%.

Some Key Findings

- Since 2015, when the 30% female board representation target for ASX 200 companies was first implemented, gender diversity has increased by 10%. However, the target of 30% has not yet been reached with the percentage of women on ASX 200 boards at 29.5%.
- The rate at which women are being appointed to boards fell from 45% in 2018 to 31.7% in 2019.
- The number of all male boards in the ASX 200 also increased in 2019 to seven.

The larger the company the more gender diverse the board?

- Female representation on ASX 20 boards stands at 35.1%, decreasing to 33% on ASX 50 boards, 31.5% for ASX 100 boards and 29.5% for ASX 200 boards.
- In the ASX 300 the overall percentage of female directors on the boards of the 299 companies currently in the ASX 300 index is 27.2%. The percentage of female directors on the boards on the 99 companies that only feature in the ASX 300 (ie the group of companies that do not feature in both the ASX 200 and ASX 300 indexes) is 21.3% (or 125 female directors of a total of 588). The AICD writes that the Chairs of these 99 companies will soon be sent a letter from the AICD and the 30% Club inviting them to become Chair members of the 30% Club and commit to ensuring at least 30 per cent female directors on their boards by the end of 2021.

New listings?

Analysis of 2018 IPOs in terms of the number of female versus male directors on each companies' board identified that of the 107 companies that listed in 2018, only four companies had a female CEO (4.5%) and five (4.8%), a female Chair. Further, female directors only accounted for 16.6% of the total number of directors appointed to these boards.



A 'wakeup call' for boards

Commenting on the result, AICD CEO and Managing Director Angus Armour said that the results are 'a wakeup call to directors, investors and shareholders across the ASX 200'.

Mr Armour went on to say that given there is no lack of talented and experienced prospective female directors available, it is up to boards to challenge themselves to understand and address barriers to making progress on the issue. 'The business community will continue to experience low levels of trust from the community until it demonstrates it is capable of addressing this issue. The community rightly expects leadership' Mr Armour added.

[Sources: AICD media release 31/10/2019; AICD Gender Diversity Progress Report July to September 2019; [registration required] The AFR 31/10/2019]

Diversity and inclusion efforts are stalling because many companies approach the issue with a 'bull market strategy' according to Morgan Stanley VC Carla Harris

Fortune Reports and Morgan Stanley Vice Chair Carla Harris has told Fortune's Most Powerful Women Summit that a key reason for diversity and inclusion efforts stalling is that too many companies approach the issues with a 'bull market strategy'. Fortune quotes Ms Harris as saying, 'When things are really great, [there's] lots of money, lots of focus, lots of spotlight on diversity and inclusion' but any downturn leads to diversity and inclusion efforts slipping down the priority list. 'It doesn't go away, but the intensity goes from 10 to one, and that's when you lose your pipeline' Ms Harris reportedly said.

[Source: Fortune 22/10/2019]

In Brief | KPMG has proposed targeted amendments to the child care subsidy as a means of narrowing the gender participation gap. Decreasing the financial disincentive for secondary earners (usually mothers) to take on more days when returning to work, could deliver benefits not only to them but to the broader economy the report argues

[Sources: KPMG media release 29/10/2019; KPMG report: Unleashing our potential: the case for further investment in the child care subsidy; [registration required] The AFR 30/10/2019]

Remuneration

In Brief | Demonstrating clear CEO accountability? The SMH reports that Westpac CEO Brian Hartzler has voluntarily given up \$1.6m in bonuses this year, and separately that ANZ CEO Shayne Elliott's short term incentives have been reduced by \$250,000 ahead of the lenders' respective AGMs

[Source: The SMH 05/11/2019]

In Brief | Is Judo bank's pay structure the way forward for banks on remuneration? Writing in The Australian, Alan Kohler suggests that Judo Bank's remuneration structure where executives are paid a salary and performance is rewarded with equity in the business (ie no short term bonuses are paid) offers a viable alternative to other lenders and would have the benefit of providing the 'right' incentives

[Source: [registration required] The Australian 05/11/2019]

Meetings and Proxy Advisers



Recent AGM results: voting outcomes on remuneration, director election/re-election and ESG proposals

Tabcorp AGM results

The Tabcorp AGM was held on 24 October. All resolutions were carried.

- **Remuneration report:** 85.5% of shareholders voted in support of the remuneration report (14.5% voting against). In consequence, the company avoided a 'second strike'. 36.63% of shareholders voted against the grant of performance rights to Managing Director and CEO David Attenborough (63.37% voted in support). The AFR reports that the Australian Shareholders Association, though critical of the design of the remuneration report on the basis that it measured long term incentives over three years rather than four, did not actually vote against it.
- **Election/re-election of directors:** Two directors, Paula Dwyer and Justin Milne were standing for re-election. 35% of shareholder voted in support of the reelection of Ms Dwyer (34.65% of shareholders voted against). 79.89% of shareholders voted in support of the reelection of Mr Milne (20.11% voting against).

[Sources: Tabcorp AGM result 24/10/2019; [registration required] The AFR 24/10/2019]

JB Hi-Fi AGM results

The JB Hi-Fi AGM was held on 24 October. All resolutions were carried.


- **Remuneration report:** 17.34% of shareholder voted against the adoption of the remuneration report (82.66% voted in support). 16.96% of shareholders voted against the grant of restricted shares to executive director Richard Murray (83.04% of shareholders voted in support).
- **Election/re-election of directors:** Greg Richards and Mark Powell were each re-elected as directors securing 94.31% of votes in support and 99.78% of votes in support respectively.

[Source: JB Hi-Fi AGM results 24/10/2019]

Qantas AGM results

The Qantas AGM was held on 25 October. All board supported resolutions were carried.

- **Election/re-election of directors:** The two directors standing for election, Paul Raynor and Richard Goyder each received 98.99% and 99.88% support respectively. The two directors standing for re-election, Todd Sampson and Barbara Ward received 99.04% and 98.84% of votes in support.
- **Remuneration:** The remuneration report received 96.45% support (3.55% votes against).
- **ESG resolutions:** The Australasian Centre for Corporate Responsibility (ACCR) sponsored two shareholder resolutions, neither of which were supported by board and neither of which were carried. The first was a special resolution to amend the company's constitution — to enable shareholders, to put ordinary advisory resolutions to shareholders —and the second was a contingent ordinary resolution calling on the Qantas board to undertake a review of the company's policies and processes relating to 'involuntary transportation' of asylum seekers. In advising shareholders to vote against the proposed constitutional amendment, the Qantas board said that it 'does not consider the requisitioned resolution to be in shareholders' best interests' on the basis that directors (rather than smaller groups of shareholders) are best placed to exercise judgement with respect to business decisions. The board further advised shareholders to vote against the ordinary resolution because it considers the issue to be a question for



government/courts and not for private enterprise. 'The Government and the Australian Courts are best placed to make decisions on the legal immigration status of people seeking to remain in Australia. Airlines and private enterprise are not positioned to adjudicate on complex immigration decisions, particularly as information and intelligence used in governmental and judicial determination processes are not publicly available' the board writes.

The constitutional amendment received 3.42% of the vote, and in consequence the ordinary resolution was not put to the meeting.

However, the asylum seeker resolution received 23.56% proxy support. According to the ACCR, both US-based asset manager Mercy Investment Services and Californian pensions fund CalPERS voted in support of the resolution. In a statement, the ACCR welcomed the result as a 'huge milestone in Australian corporate history with the largest ever vote against a board on a human rights issue' and a 'powerful signal from the investment sector that they are losing patience with companies who do not take steps to end complicity in Australia's ongoing mistreatment of people seeking asylum'.

[Sources: Qantas notice of meeting; Qantas AGM results; ACCR media release 25/10/2019; [registration required] The Australian 26/10/2019]

Carsales AGM results

The Carsales AGM was held on 25 October.

- **The remuneration report:** 32.35% of shareholders voted against the adoption of the remuneration report (67.65% voted in support) constituting a 'first strike'. In addition, 51.91% of shareholders voted against granting long term incentives to the CEOs (48.09% voted in support).
- **Re-election/election of directors:** David Wiadrowski was elected as a director with 77.32% support (22.68% votes against). Directors Kim Anderson and Edwina Gilbert were both re-elected to the board securing 97.54% and 99.72% support respectively.

[Source: Carsales AGM result 25/10/2019]

Bendigo and Adelaide Bank

The Bendigo and Adelaide Bank AGM was held on 29 October date. All resolutions were carried.

- **The remuneration report:** The resolution to approve the remuneration report was carried with 94.58% support (5.42% against). A resolution to approve the managing director Marnie Baker's participation in the employee salary sacrifice, deferred share and performance share plan was carried with 82.95% support (17.05% voting against). The AFR attributes the result to the influence of Institutional Shareholder Services (ISS) which reportedly advised shareholders to vote against the granting of performance rights to Ms Baker on the basis that excessive weight was placed on non-financial metrics, in this case on a customer-focused metric the net promoter score.
- **Re-election/election of directors:** The three directors standing for re-election were each re-elected as with David Matthews receiving 91.68% support (8.32% votes against); Rob Hubbard receiving 98.67% support (1.33% votes against); and Jan Harris receiving 97.77% support (2.23% votes against). David Foster was elected as a director with 95.01% of votes in support (4.99% of votes against).

[Sources: Bendigo and Adelaide Bank AGM result 29/10/2019; [registration required] The AFR 29/10/2019]

Fortescue AGM result

The Fortescue Metals Group AGM was held on 29 October. All resolutions were carried.



- **The remuneration report:** The resolution to approve the remuneration report was carried with 75.28% of shareholders voting in support (24.72% voting against). A resolution to approve an increase in fees paid to non-executive directors was passed with 89.79% support (10.21% of shareholder voting against). A resolution granting ability for CEO Elizabeth Gaines to participate in the performance rights plan was carried with 89.79% support (10.21% against).
- **Re-election/election of directors:** One director was standing for election, Dr Ya-Qin Zhang. Dr Zhang was elected with 97.82% support (2.18% against). Sharon Warburton was re-elected to the board with 95.97% support (4.03% against).

[Sources: Fortescue AGM result 29/10/2019]

Myer AGM result

The Myer AGM was held on 30 October. All resolutions were carried.

- **The remuneration report:** The resolution to approve the remuneration report was carried with 80.85% of shareholders voting in support (19.15% voting against). A resolution granting performance options to CEO and Managing Director John King was passed with 97.78% of shareholders voting in support (2.22% against). Ahead of the meeting, the SMH reports that Institutional Shareholder Services (ISS) and Glass Lewis both recommended shareholders vote for the remuneration report though, both also reportedly questioned the 'high level' of Mr King's fixed remuneration.
- **Re-election/election of directors:** One director was standing for election, Ms Jacquie Naylor. Ms Naylor was elected with 81.89% of shareholders voting in support (18.11% voting against). Ms JoAnne Stephenson was re-elected as a director with 74.83% of shareholder voting in support (25.17% voting against). Reportedly, activist shareholder Solomon Lew (Premier Investments) is understood to have voted against the reelection of directors as well as against the remuneration report having led a 'shareholder revolt' last year that resulted in a second strike in 2018.

[Sources: AGM result 30/10/2019; [registration required] The AFR 30/10/2019; [registration required] The Australian 30/10/2019; The SMH 21/10/2019]

Bellamy's AGM result

The Bellamy's AGM was held on 31 October. All resolutions were carried.

- **The remuneration report:** The resolution to approve the remuneration report was carried with 96.17% support (3.83% against).
- **Re-election/election of directors:** Two directors stood for reelection. Both were elected with over 98% support.

[Source: Bellamy's AGM result 31/10/2019]

Crown AGM results

The Crown Resorts Ltd AG was held on 24 October. All resolutions were carried.

- **The remuneration report:** Approximately 18% of shareholders voted against the remuneration report.
- **Re-election/election of directors:** The three directors were standing for re-election (Helen Coonan, Andrew Demetriou and Harold Mitchell) were all re-elected. Approximately 27% of shareholders opposed Harold Mitchell's reelection, 23% opposed Helen Coonan's election and 7% voted against the



re-election of Andrew Demetriou. The AFR reports that the meeting was 'dominated' by questions about the adequacy of the company's strategy to respond to allegations of corruption and the consequent impact on the company's value. The AFR goes on to suggest that the 'protest vote' would have been higher but for James Packer voting his 37% stake in support.

[Source: Results of AGM 24/10/2019; [registration required] The AFR 24/10/2019; [registration required] The Australian 25/10/2019]

Blackmores

The Blackmores AGM was held on 31 October. All resolutions were carried.

- **The remuneration report:** The resolution to approve the remuneration report was carried with 96.06% support (3.94% against). Resolutions to approve short and long term incentive plans were also carried, each resolution receiving over 95% support. A resolution to a grant long term award to Alastair Symington was carried with 77.66% support (20.27% against).
- **Re-election/election of directors:** Ms Christine Holman was elected as a director with 97.46% support (0.38% against).

[Sources: Blackmores AGM results 31/10/2019]

United States | 'Striking a balance' (nor not?): SEC has voted to propose amendments to 'modernise' the shareholder proposal rule. However, there are concerns that the proposed changes will make it harder to submit resolutions and therefore serve to limit the ability for shareholders to hold companies to account

Key Takeouts

- The US Securities and Exchange Commission (SEC) has proposed amendments to 'modernise' the shareholder proposal rule. Reportedly SEC voted 3-2 to put the proposals out for public comment.
- Three key proposed changes: 1) update the criteria, including the ownership requirements, that a shareholder must satisfy to be eligible to have a shareholder proposal included in a company's proxy statement; 2) update the 'one proposal' rule to clarify that a single person may not submit multiple proposals at the same shareholder's meeting, whether the person submits a proposal as a shareholder or as a representative of a shareholder; and 3) 'modernise' the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholder meetings.
- According to media reports, investor groups have raised concerns that the proposed changes may (if implemented) make it more difficult to submit resolutions and therefore serve to limit the ability of investors to hold companies to account, eg with respect to ESG issues including climate change. Two SEC Commissioners have also raised concerns.
- There will be a public comment period of 60 days before SEC will vote to officially increase the re-submission thresholds and eligibility requirements.

On 5 November, the US Securities and Exchange Commission (SEC) voted (reportedly 3 votes to 2) to propose amendments to 'modernise' the rule that governs the process for shareholder proposals to be included in a company's proxy statement.

Three key (proposed) amendments



The proposed amendments would revise the eligibility requirements under Rule 14a-8(b), the one-proposal limit under Rule 14a-8(c), and the resubmission thresholds under Rule 14a-8(i)(12).

1. Update the criteria, including the ownership requirements, that a shareholder must satisfy to be eligible to have a shareholder proposal included in a company's proxy statement

The proposed amendments would eliminate the current requirement that a shareholder-proponent hold at least 1% of a company's securities for at least one year to be eligible to submit a proposal, and replace it with the following three alternative thresholds, any one of which a shareholder could satisfy to be eligible to submit a proposal: 1) continuous ownership of at least \$2,000 of the company's securities for at least three years; 2) continuous ownership of at least \$15,000 of the company's securities for at least two years; or 3) continuous ownership of at least \$25,000 of the company's securities for at least one year.

Announcing the Rule, SEC explains the proposed requirement for a shareholder proponent to hold the shares for at least three years, is intended to 'demonstrate long-term investment in the company'.

In addition, the proposed changes would:

- require that a shareholder-proponent who elects to use a representative for the purpose of submitting a shareholder proposal provide documentation to 'make clear that the representative is authorised to act on the shareholder-proponent's behalf and to provide a meaningful degree of assurance as to the shareholder-proponent's identity, role and interest in a proposal that is submitted for inclusion in a company's proxy statement'
- require that each shareholder-proponent state that he or she is able to meet with the company, either in person or via teleconference, no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal, and provide contact information as well as business days and specific times that the shareholder-proponent is available to discuss the proposal with the company.

2. Update the 'one proposal' rule to clarify that a single person may not submit multiple proposals at the same shareholder's meeting, whether the person submits a proposal as a shareholder or as a representative of a shareholder

Apply the one-proposal rule to 'each person' as opposed to 'each shareholder' who submits a proposal. The proposed change is intended to 'clarify' the SEC says, that a single person is not able to submit multiple proposals at the same shareholder's meeting on behalf of different shareholders.

3. modernize the levels of shareholder support a proposal must receive to be eligible for resubmission at the same company's future shareholder meetings

The proposed amendments would:

- 'modernise' the current resubmission thresholds of 3%, 6% and 10% for matters voted on once, twice or three or more times in the last five years, respectively, with thresholds of 5%, 15% and 25%, respectively; and
- add a new provision that would allow for exclusion of a proposal that has been previously voted on three or more times in the last five years, notwithstanding having received at least 25% of the votes cast on its most recent submission, if the proposal (i) received less than 50% of the votes cast and (ii) experienced a decline in shareholder support of 10% or more compared to the immediately preceding vote.

'Ripe' for change?



SEC Chair Jay Clayton said that 'the rule was intended to facilitate meaningful engagement between companies and proposing shareholders, for the benefit of all shareholders. It was not, however, intended to empower a few shareholders to repeatedly impose the direct and indirect costs of pursuing a proposal that has garnered very little support, costs that are borne by all shareholders...It is not however, intended to be a forum for debate of issues that are not, at least at the time, of import to a very substantial majority of shareholders'.

As such, he said the 'shareholder proposal rule and, in particular, its resubmission thresholds is ripe for modernization and retrospective review, as it has been several decades since its last significant revision'.

'Striking a balance'?

In a statement announcing the proposed changes, Commissioner Roisman said that he believes that the 'proposed changes will facilitate and encourage meaningful company-shareholder engagement, and make changes that can help prevent misuse of the process.'

Writing separately in Harvard Law School Forum on Corporate Governance and Financial Regulation, Commissioner Roisman commented that 'criticism for any action we [SEC] take is inevitable' given the divided views on the issue, but that this cannot be an excuse for inaction.

He then detailed the 'measured approach' SEC took in proposing the changes, explaining that they 'seek to strike a balance between maintaining an avenue of communication for shareholders, including long-term shareholders, while also recognizing the costs incurred by companies and their shareholders in addressing shareholder proposals'.

Ultimately he said, the proposed changes are intended to 'help asset managers, who vote on behalf of many Main Street investors, receive more accurate, transparent, and complete information when they make their voting decisions'.

Commissioner Roisman went on to say that the proposed changes 'involved much line-drawing along the way. Inherent in any such exercise is debate about where the line is drawn. Some will likely say that we should have taken a heavier hand in overseeing proxy voting advice businesses. Others will oppose these measures as too drastic. But this proposal is a first step toward receiving actionable feedback that can help us move toward a sensible modernization of our rules'. He added that he looks forward to feedback on the proposed changes.

Not universally supported by all Commissioners?

SEC Commissioner Allison Herren Lee has said she opposes the proposed changes on the basis that they would 'operate to suppress the exercise of shareholder rights'. The proposed changes, she argues would 'make it more costly and more difficult for shareholders to cast their votes or even to get their issues onto corporate ballots'.

Similarly Commissioner Robert J Jackson opposed the proposed changes on the basis that they 'would limit public-company investors' ability to hold corporate insiders accountable. We haven't examined our rules in this area for years, so updating them makes sense—and these issues have been thoughtfully debated for decades. But rather than engage carefully with the evidence produced by those debates, today's proposal simply shields CEOs from accountability to investors. Whatever problems plague corporate America today, too much accountability is not one of them, so I respectfully dissent'.

60 day public comment period: The public comment period is open for 60 days following publication of the proposing release in the Federal Register.



Response to the proposed changes?

CNBC reports that shareholder advocacy groups have raised concerns that the proposed higher resubmission thresholds could serve to limit the extent to which investors are able to raise awareness/maintain pressure on companies around ESG issues that take time to prove financially material to the company's operations eg climate change.

CNBC quotes Danielle Fugere, president and chief counsel of As You Sow as saying that her organisation 'along with many investors, are highly concerned about the proposed regulations...When we see a proposal like this rule change, that would reduce the ability of shareholders to engage their companies to engage other shareholders. This is a loss of significant proportion.' Separately, Ms Fugere is quoted by Market Watch as saying that the proposal has potential to 'increase shareholder and company risk particularly regarding growing climate concerns. We don't believe that it will withstand public or legal scrutiny'.

MarketWatch also quotes Executive Director of the Council of Institutional Investors, Ken Bertsch as raising similar concerns. Mr Bertsch reportedly said, 'CEOs do not like public challenges to how and how much they are paid, or to be second-guessed by shareholders on a range of environmental, social and governance matters...That is what is driving the concerted effort by lobbyists for CEOs to prod the SEC to shackle proxy advisory firms and limit shareholder proposals. The rules are an unnecessary interference in the free market, and would impede investors' voice on critical matters at US public companies'.

The FT reports that business groups have welcomed the proposed changes. The FT quotes US Chamber of Commerce official Tom Quaadman as praising the proposals on the basis that they will 'help improve communication between investors and businesses'.

[Sources: SEC media release and factsheet 05/11/2019; Statement of Chairman Jay Clayton on Proposals to Enhance the Accuracy, Transparency and Effectiveness of Our Proxy Voting System 05/11/2019; Harvard Law School Forum on Corporate Governance and Financial Regulation 05/11/2019; 05/11/2019; 05/11/2019; CNBC 05/11/2019; MarketWatch 05/11/2019; [registration required] The FT 06/11/2019]

Related News: Institutional Shareholder Services has commenced proceedings against the SEC claiming its rights to free speech have been infringed by SEC guidance

Writing in Harvard Law School Forum on Corporate Governance and Financial Regulation, General Counsel at Institutional Shareholder Services (ISS) confirmed that ISS filed a lawsuit against the SEC on 31 October, challenging SEC's interpretation and guidance applying the proxy solicitation rules to the provision of proxy advice. ISS' view he says, is that there is a distinction between proxy solicitations (ie communications by the boards and management of public companies advocating that shareholders vote to support the position favoured by the person doing the solicitation) and proxy advice.

Mr Friedman said that 'The position articulated by the SEC in August, combined with the agency's recent announcement that it will introduce further and likely onerous rulemaking in this area—reported to include an issuer pre-review of proxy advisory reports—suggests to us that the interpretation and guidance will be used to impede our ability to deliver our data, research, and vote recommendations in an independent and timely manner. The net effect of the SEC's actions will be not only to diminish important investor protections by, for example, compromising the independence of proxy research and vote recommendations, but also to impair what is now a balanced, independent, transparent, and well-functioning relationship between proxy advisers and their clients that over decades has resulted in an efficient and effective system for proxy voting... This litigation against the SEC is not something that we at ISS take lightly. We believe, however, it to be necessary to prevent the chill of ISS' protected speech as a proxy adviser and to ensure our ability to continue to deliver to our clients the timely and independent advice that they rely on to help them make informed decisions with regard to the governance of their publicly traded portfolio companies.'

[Sources: Harvard Law School Forum on Corporate Governance and Financial Regulation 05/11/2019; ISS Complaint; [registration required] The FT 01/11/2019]



Disclosure and Reporting

New Zealand | The NZ government is consulting on a proposed mandatory (comply or explain) TCFD disclosure requirement for listed issuers, banks, general insurers, asset owners and asset managers

The NZ government has released a [discussion paper](#), seeking feedback on a proposed, mandatory (comply or explain) Task Force on Climate-related Financial Disclosures (TCFD) based climate related financial disclosures regime.

The deadline for submissions is 13 December 2019.

Details

Proposals include the following.

- **The TCFD reporting framework would be the default 'comply'.** 'Comply' would also be met by disclosing climate-related information under other reporting frameworks that are TCFD-aligned. Not complying with the TCFD in full would be permissible, in the first year only, subject to explaining why some disclosures have not been made, eg, because targets and metrics are still being developed. Thereafter, non-disclosure would only be allowable on the basis of a preparer's analysed and reported conclusion that they see themselves as not being materially affected by climate change, with an explanation as to why.
- **Detailed disclosure required:** It's proposed that there be a stand-alone TCFD report within the entity's annual report, on the basis that the information has important linkages to the financial statements and to the general commentary in annual reports about governance, strategy and risk management. With respect to the level of detail required, the discussion paper says that 'Climate-related financial information should be disclosed in annual reports in a level of detail appropriate to the needs of users of annual reports, and with the use of cross-references or mappings to assist users to locate further detailed information if needed'.
- **Application:** Consistent with the TCFD's recommendations, the disclosure system would apply to: listed issuers, banks, general insurers, asset owners and asset managers. The paper says that the government has not yet formed a view on whether smaller entities should be excluded.
- **Mandatory assurance obligations should be considered:** The paper suggests that with the possible exception of greenhouse gas emissions disclosures, the government should not consider imposing mandatory assurance obligations until it becomes clearer what users may want from assurance engagements, and standard setters have responded to user demand with new or amended standards and guidance material.
- **Proposed implementation timeframe:** It's proposed that the new mandatory (comply-or-explain) climate-related financial disclosures would come into effect for financial years commencing six months on or after the date that the regulations are introduced, with potentially a longer transition period for smaller entities (if they are not excluded).

[Note: Table 1 of the discussion paper at p9 summarises the proposals. The discussion paper can be accessed [here](#).]

[Sources: Climate related financial disclosures discussion document: Climate-related financial disclosures: Understanding your business risks and opportunities related to climate change]



United Kingdom | Room for improvement? The FRC annual review of corporate reporting released

The UK Financial Reporting Council (FRC) released the results of its annual review of corporate reporting on 30 October, and separately wrote to Audit Committee Chairs and Finance Directors calling for improvements necessary to address issues of concern to investors as well as to enhance public trust in business.

The FRC reviewed 207 annual and interim reports for its 2018/19 monitoring activity and conducted three substantive thematic reviews on significant reporting issues including two new reporting standards.

Areas for improvement? Among other areas, the FRC says that it expects companies to improve: a) the quality reporting of forward-looking information; b) the potential impact of emerging risks on future business strategy eg climate risk; and c) the carrying value of assets and the recognition of liabilities.

Climate risk? With respect to disclosure of climate risk, the report makes clear the regulator's expectation is that, in line with the government's green finance strategy, all listed companies should report under the Task Force on Climate Related Financial Disclosures' (TCFD) reporting framework by 2022. Further, the report comments that the FRC contacted some companies whose business models 'would appear to give rise to significant climate risk, but which was not disclosed in the annual report. We expect disclosure of significant physical or transitional risks'.

The FRC says that the 'failure to report on these crucial areas undermines trust in business and can lead to the conclusion that management is either unaware of their potential impact, is being opaque, or is not managing them effectively', especially in 'times of uncertainty'.

The FRC says that it expects companies to think beyond the period covered by their viability statement and identify those key risks that challenge their business models in the medium to longer term and have a particular focus on environmental issues.

Limited improvement: Among the areas in which the FRC noted an improvement was improvement in disclosures of critical judgements and estimates and alternative performance measures (APMs). The FRC said that it encourages companies to continue to enhance this aspect of their reporting.

Results of the review of corporate governance disclosure? The results of a review of corporate governance disclosures and compliance with the UK Corporate Governance Code and setting out expectations for reporting in 2020 will be published in a separate report later this year.

[Sources: FRC media release 30/10/2019; FRC annual review of Corporate Reporting 2018/2019 October 2019; [registration required] The WSJ 30/10/2019]

Regulators

Top story | Is the ACCC becoming a second privacy regulator?

MinterEllison has published an article reflecting on the broader significance of the Australian Competition and Consumer Commission's (ACCC's) proceedings against Google for allegedly misleading consumers about the collection and use of location data.

The full text of the article can be accessed on the MinterEllison website here: <https://www.minterellison.com/articles/accc-second-privacy-regulator>

Financial Services



FSRC Case Study: ASIC has commenced civil proceedings against IOOF-owned financial advice business RI Advice and former financial adviser John Doyle

Key Takeouts

- ASIC has commenced legal action in Federal Court against RI Advice and former financial adviser John Doyle, relating to evidence heard at the financial services royal commission
- Allegations against Mr Doyle: ASIC alleges that Mr Doyle gave inappropriate advice to retail clients to invest in complex structured financial products without taking into account their financial goals/risk tolerance
- Allegations against RI Advice: ASIC alleges RI Advice failed to take reasonable steps to ensure Mr Doyle provided appropriate advice, acted in clients' best interests and put his clients' interests ahead of his own. ASIC also alleges that RI Advice knew, or should have known, that there was substantial risk of Mr Doyle not complying with his obligations under the law and that he was repeatedly recommending structured products to his clients, bypassing compliance processes.
- According to ASIC, each contravention carries a maximum penalty of \$1m for RI Advice and \$200,000 for Mr Doyle

The Australian Securities and Investments Commission (ASIC) announced that it has commenced civil proceedings in the Federal Court against RI Advice Group Pty Ltd (RI Advice) and a former financial adviser, John Doyle who was an authorised representative of RI Advice between May 2013 and June 2016.

ASIC comments that the conduct of both RI Advice and Mr Doyle was examined as a case study in the Financial Services Royal Commission.

[Note: The Financial Services Royal Commission's Interim Report, includes discussion of the conduct of Mr Doyle and RI Advice at p188-193, and at p201-205. See: [Financial Services Royal Commission Interim Report, volume 2](#)].

Allegations?

- **Allegations against RI Advice:** ASIC alleges that RI Advice:
 1. failed to take reasonable steps at various times during the period 1 November 2013 to 30 June 2016, to ensure the Mr Doyle complied with ss 691B; 961G, 961H and 961J of the Corporations Act 2001 (Cth) (the Act);
 2. failed to do all things necessary to ensure that the financial services covered by its licence were provided efficiently, honestly and fairly (in contravention of s912A(1)(a) of the Act;
 3. failed to comply with s961L of the Act;
 4. failed to take reasonable steps to ensure that its representatives complied with the financial services laws (ss961B; 961G; 961H and 961J).

ASIC is seeking declarations pursuant to s1317E of the Act that RI Advice failed to comply with various sections of the Act; orders pursuant to s1317G that RI pay pecuniary penalties in respect of its contraventions of s961L of the Act and orders pursuant to s1101B in respect of compliance and remediation.



According to ASIC, the maximum civil penalty for contraventions alleged against RI Advice is \$1 million per contravention.

- **Allegations against Mr Doyle:** ASIC said it is also taking action against Mr Doyle, alleging that he gave inappropriate 'cookie cutter' advice to retail clients to invest in complex structured financial products without taking into account their financial goals or risk tolerance. ASIC alleged that Mr Doyle received upfront and ongoing commissions for each of his clients' investments in the structured products. More particularly, ASIC alleges that Mr Doyle: contravened ss 961B, 961G, 961H and 961J (and thereby s961Q) by providing inappropriate advice to clients

ASIC is seeking declarations pursuant to s1317E of the Act that Mr Doyle contravened various sections of the Act and orders, pursuant to s1317G of the Act that Mr Doyle pay pecuniary penalties in respect of his contraventions of s691Q of the Act.

According to ASIC, the maximum civil penalty for contraventions alleged against Mr Doyle is RI Advice is \$200,000 per contravention.

[Sources: ASIC media release 31/10/2019; ASIC's Concise Statement; Originating Process; [registration required] The Australian 31/10/2019; [registration required] The AFR 31/10/2019; Independent Financial Adviser 31/10/2019]

ASIC update on Federal Court proceedings against NULIS Nominees Ltd and MLC Nominees Pty Ltd in connection with alleged fee for no service issues

Context: In September 2018, the Australian Securities and Investments Commission (ASIC) announced it had commenced proceedings in the Federal Court against NULIS Nominees (Australia) Limited (NULIS) and MLC Nominees Pty Ltd (MLC Nominees) in relation to alleged fee for no service issues.

ASIC said that it is seeking declarations of contravention of ss912(1)(a), 912A(1)(c) and 1041H(1) of the Corporations Act; ss12DA(1), 12DB(1)(g) and 12DB(1)(i) of the ASIC Act and general law duties; and pecuniary penalties pursuant to s12GBA of the ASIC Act in respect of each declared civil penalty contravention; and pecuniary penalties and costs.

(For a summary of ASIC's allegations see: Governance News 10/09/2019.)

Update: On 4 November, ASIC announced that a statement of agreed facts and admissions had been filed in the Federal Court in relation to proposed orders to be sought by ASIC which have been agreed between the parties. Provision has been made for the parties to file any further evidence with the Court and for submissions on liability and penalty.

ASIC said that a hearing will take place in the Federal Court on 16 March 2020.

[Sources: ASIC media release 04/11/2019; [registration required] The Australian 05/11/2019; Financial Standard 04/11/2019]

The Insurance Council of Australia has approved a new General Insurance Code of Practice, the new code will be formally launched in 'early 2020'

Newly appointed President of the Insurance Council of Australia (ICA) and in-coming Chair of the ICA board (the appointment is effective from January 2020), Gary Dransfield (Suncorp CEO) issued a statement announcing that the ICA has approved a new General Insurance Code of Practice following 'one of the most extensive reviews in the Code's 25-year history'.

Timing? Mr Dransfield said that the revised Code will be formally launched in 'early 2020'.

What's changed? The ICA issued a media release providing a brief overview of the changes.



These include the following:

1. Plain-English rewrite
2. Inclusion of a new section and 'specific provisions for customers experiencing vulnerability' including:
 - a) a requirement for firms to have a policy to support customers experiencing family violence to be in place by 1 July 2020
 - b) a requirement that appropriate employees are trained to understand if a customer may be vulnerable and specific provisions regarding mental health
- 'Strengthened' financial hardship provisions now include requirements for employees and agents involved in debt collection to be trained on the Financial Hardship requirements of the Code
- Enhanced sanction powers for the Code Governance Committee (CGC) including:
 - a) ability for the CGC to impose sanctions in the event of a Code breach
 - b) streamlining the process the CGC needs to undertake before imposing a breach
 - c) new ability to require an insurer that has committed a significant breach to pay a community benefit payment. The payment is up to a maximum of \$100,000 and will be determined in accordance with the insurer's gross underwritten premium and number of customers. This type of sanction, the ICA says, is 'unique' to the revised Code
- New requirement for Code signatories to provide consumers with information on cash settlements so that they are better informed. A provision for scope of works similarly aims to help consumers understand this process
- New mandatory standards for claims investigators have been introduced. The standards include timeframes for updating a customer on the investigation process, requirements regarding requests for information and requirements as to how the investigation interview should be conducted

[Note: At this stage, the revised Code does not appear to be publicly available.]

[Sources: ICA media release 31/10/2019; Suncorp media release 31/10/2019]

\$185 million in compensation awarded to consumers in AFCA's first 12 months

The Australian Financial Complaints Authority (AFCA) has released a statement providing a snapshot of activity over the first twelve months of operation.

Some Key Points

- Complainants awarded \$185 million in compensation over the first 12 months of operation
- Australians are making 200 complaints a day on average
- 40% increase in complaints to AFCA compared to predecessor schemes – 73,272 vs 52,232
- 70% of complaints resolved in favour of the complainant and 11% of complaints are being made by people experiencing financial difficulty'
- 77% of all complaints resolved, with the majority of those resolved in 60 days or less



- Credit complaints, insurance claims and financial hardship the biggest issues
- Banks the most complained about financial institution followed by General Insurers

Commenting on the statistics, AFCA Chief Executive Officer and Chief Ombudsman David Locke said that 'the increase in complaint numbers we are witnessing at AFCA indicates that there is still work to be done by firms to improve their practices and restore public faith in financial firms. AFCA will continue to focus on member engagement to help firms to enhance their own internal dispute resolution procedures.'

[Source: AFCA media release 01/11/2019]

Australian Small Business and Family Enterprise Ombudsman says she wants to hear from small and family enterprises being exited from financial planning businesses

In a statement, the Australian Small Business and Family Enterprise Ombudsman has said it wants to hear from small and family enterprises being exited from financial planning businesses.

'Following recent media reports regarding AMP Financial Planning's restructure of its business, my office has received dozens of requests for assistance from small business financial planners across a number of licensors, many of whom say they are facing financial ruin... Small business owners are reporting that they are bearing the brunt of brutal restructures by their licensors. They are saying that licensors' handling of matters has not been transparent or equitable... We're concerned about a number of behaviours that may include the conduct of lookback audits, financial planning licensors shifting responsibility for client compensation payments to licencees, short notice periods provided to licencees exiting the business and restraint of trade provisions.'

[Source: Australian Small Business and Family Enterprise Ombudsman media release 05/11/2019]

ASIC has cautioned superannuation trustees to improve the standard of communication to members ahead of the deadline to inform members about changes to insurance cover

The Australian Securities and Investments Commission (ASIC) has issued a letter to superannuation industry associations setting out its expectations with respect to member communications associated with the Treasury Laws Amendment (Putting Members' Interests First) Act 2019 and further member communications associated with the Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019.

- By 1 December 2019, trustees must give notice to impacted members with balances less than \$6,000, indicating that if their balance remains less than \$6,000, their insurance cover will cease on 1 April 2020 unless there is an election in writing to maintain insurance
- By 1 April 2020, insurance is not to be provided to members who have an account balance less than \$6,000 or for members under-25 years old, unless the member has elected in writing to take out or maintain insurance.

ASIC Commissioner Danielle Press said that the 'superannuation industry needs to learn from what happened earlier this year when trustees communicated with their members about the PYSP reforms. The PYSP communications reviewed by ASIC were not always balanced in providing members with all available options to them, including the reason why ceasing insurance might be appropriate'

ASIC's expectations: ASIC said that it expects trustees to help their members understand the impact of the reforms on them and make good decisions by: a) providing balanced and factual communications, that include appropriate context about the reforms; and b) tailoring communications to the needs of their members.



[Sources: ASIC media release 30/10/2019; ASIC letter to trustees: Member communications in relation to Treasury Laws Amendment (Putting Members' Interests First) Act 2019 and Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019]

Consultation on legislation for Australian Business Growth Fund announced

Treasury is consulting on draft legislation and accompanying explanatory material to authorise the Commonwealth Government to invest in the Australian Business Growth Fund (BGF) jointly with financial institutions.

Announcing the consultation, the Treasurer and the Minister for Small and Family Business, Skills and Vocational Education said that the government is committing \$100 million in funding to establish the BGF and partnering with other financial institutions to provide equity funding to SME's. The aim is for the Fund to grow to \$1 billion as it matures. The AFR reports that the big four banks are each expected to contribute approximately \$100m each in funding to secure a board seat at the new fund, and that HSBC is understood to be contributing a smaller amount.

Purpose? The draft explanatory material says that the object of the draft Bill is to increase investment in Australian small and medium enterprises by the Commonwealth participating in, and investing in (together with other persons), the Australian Business Growth Fund.

Some Key Points

- Part 1 of the draft Bill outlines the proposed commencement date, the objects of the legislation, definitions of key terms used, and the application of the legislation. It also contains a simplified outline of the legislation.
- Part 2 proposes to authorise the Minister to invest in the Australian Business Growth Fund and places limitations on the exercise of the Minister's investment powers.
- Part 3 contains administrative provisions that are intended to support and govern the Minister's powers to invest in the Australian Business Growth Fund.

Timeline: The closing date for submissions is 8 November 2019. The Treasurer and the Minister for Small and Family Business, Skills and Vocational Education said in their joint statement that legislation to establish the BGF will be introduced to Parliament before the end of 2019.

[Sources: Australian Business Growth Fund Bill 2019 exposure draft; explanatory materials; Joint media release, Treasurer Josh Frydenberg and Minister for Small and Family Business, Skills and Vocational Education Michaelia Cash 04/11/2019; [registration required] The AFR 04/11/2019]

In Brief | AFCA announced the appointment of ex-ATO assistant commissioner Justin Untersteiner as chief operating officer, commencing 2 December 2019

[Source: AFCA media release 04/11/2019]

In Brief | Westpac New Zealand Limited (Westpac) has retained its accreditation as an internal models bank following completion of an 'extensive remediation process' required by the Reserve Bank of New Zealand. As a condition of retaining its accreditation Westpac will need to satisfy several ongoing requirements, RBNZ said

[Source: RBNZ media release 04/11/2019]

Accounting and Audit



Accounting bodies CAANZ, CPA and IPA have called for a re-examination of the way in which financial and tax advice frameworks operate

Accounting bodies' Chartered Accountants Australia and New Zealand (CAANZ), CPA Australia and the Institute of Public Accountants (IPA) have issued a joint statement announcing a 'shared goal' to advocate for the simplification/streamlining of financial and tax advice frameworks to 'better enable the provision of affordable, accessible and quality advice to business and consumers' and to reduce the regulatory burden on accountants.

'The failures that were revealed from the Banking Royal Commission have further highlighted the extreme complexity of the current regulatory frameworks in financial advice, which are not in sync with each other.

It is time to draw a line in the sand and end the constant layers of change. We need to re-examine the complex regulatory frameworks that govern how advisory services are provided in Australia' the statement says.

The statement adds that members' feedback is sought to inform 'how we build the roadmap to reform'.

The statement also includes a video in which the CEOs of each organisation, call for more efficient regulatory frameworks for advisory services and commit to work together in advocating for change.

[Sources: CA ANZ media release 01/11/2019]

In Brief | 'Audits are not consistently reaching the necessary high standards required to provide confidence in financial reporting': The UK FRC's latest annual report — Developments in Audit — has found that 'auditors continue to struggle most with challenging management sufficiently, especially in more judgmental areas, such as long-term contracts, goodwill impairment or the valuation of financial instruments'

[Sources: FRC media release 05/11/2019; Developments in Audit November 2019]

Risk Management

Estimated \$200-300m in remediation? Woolworths Group has committed to full remediation for approximately 5,700 salaried store team members affected by non-compliance with the general retail industry award (GRIA)

On 30 October, Woolworths Group issued a statement 'unreservedly' apologising after an internal review identified that approximately 5,700 salaried staff had not been paid in 'full compliance' with obligations under the General Retail Industry Award (GRIA).

- **What happened?** Woolworths said it commenced the review earlier in the year after the implementation of a new Enterprise Agreement (EA) in Woolworths Supermarkets and Metro stores. The review highlighted found an 'inconsistency in pay' for a number of salaried staff compared to staff paid under the new EA. More particularly, the review found that the number of hours worked, and when they were worked, were not adequately factored into the individual salary settings for some staff.
- **Estimated remediation?** Woolworths says that taking the existing two years of data and using initial modelling across the Group, the estimated one-off impact for remediation, assuming the issue could go as far back as the implementation of the modern award in 2010, is expected to be in the range of \$200-300 million (before tax). The statement adds that an update will be provided at the Group's Half Year 2020 results in February.



- **Timing?** Woolworths said that affected current and former salaried staff will receive their full entitlements, including back payments with interest and superannuation contributions, as soon as possible with interim back payments due to be made before Christmas.
- **Review to extend across Woolworths Group:** The statement adds that the review is being extended to all Woolworths Group businesses in Australia to ensure that all relevant award requirements have been met.

Woolworths Group CEO Brad Banducci commented: 'As a business we pride ourselves on putting our team first, and in this case we have let them down. We unreservedly apologise. The highest priority for Woolworths Group right now is to address this issue, and to ensure that it doesn't happen again.'

Fair work ombudsman's response: 'admission is not absolution'

In a statement responding to Woolworths' self-disclosure, the Fair Work Ombudsman expressed 'shock' that 'another large, publicly listed company has today admitted to breaching Australia's workplace laws on a massive scale. Woolworths joins Wesfarmers, Qantas, Commonwealth Bank, Super Retail Group, Michael Hill Jewellers and many others in failing to ensure that staff are receiving their lawful entitlements'.

The statement adds that the ombudsman will conduct an investigation in relation to Woolworths' self-disclosure.

Fair Work Ombudsman Sandra Parker said that though she encourages businesses to self-report breaches, 'admission is not absolution'. Ms Parker said that the ombudsman will consider the full range of enforcement options available under the Fair Work Act, including court enforceable undertakings and litigation where appropriate'.

Ms Parker also said she intends to raise the issue with 'Boards around the country, because frankly that is the level within organisations that should be taking an active leadership role on this issue, and seeking assurance about compliance from executive managers'.

Ms Parker added that 'If companies do not prioritise workplace compliance from the outset, it can take significant resources and time to fix, particularly where companies do not have accurate records of times worked and wages paid' and reminded businesses of the broader reputational risk of breaching workplace laws, which can have a lasting impact on the bottom line'.

The issue has received wide media coverage. The SMH reports that it has prompted other businesses to undertake their own payroll audits.

[Sources: Woolworths media release 30/10/2019; Fair Work Ombudsman media release 30/10/2019; [registration required] The Australian 30/10/2019; The SMH 04/11/2019;

Consequences of breaching company's personal conduct policy: A relationship in breach of company policy on personal conduct has reportedly led to the termination of McDonalds CEO Steve Easterbrook's employment

The McDonalds board has reportedly voted to terminate CEO Steve Easterbrook's employment following an investigation into his (consensual) relationship with an unnamed employee in violation of the company's policy on personal conduct.

Mr Easterbrook has reportedly resigned from the board. Quoting from an email reportedly written by Mr Easterbrook to employees, The WSJ reports that he said: 'This was a mistake. Given the values of the company, I agree with the board that it is time for me to move on.'



Reportedly Mr Easterbrook has been replaced by USA President Chris Kempczinsk.

[Sources: [registration required] The WSJ 03/11/2019; [registration required] The FT 04/11/2019]

The Royal Commission into Aged Care has released its interim report recommending an overhaul of the aged care sector. In a statement, the Governance Institute said the report has governance implications for both the aged care sector and more broadly

The Royal Commission into Aged Care released its *Interim Report*, entitled *Neglect*, on 31 October 2019. The report, found that a fundamental overhaul of the design, objectives, regulation and funding of aged care in Australia is required.

The three volume Report sets out the extent of the failure of Australia's aged care services and what the Royal Commission has learned to date.

Systemic issues: The Interim Report identifies a number of systemic problems in aged care with a system that: a) is designed around transactions, not relationships or care; b) minimises the voices of people receiving care and their loved ones; c) is hard to navigate and does not provide information people need to make informed choices about their care; d) relies on a regulatory model that does not provide transparency or an incentive to improve; and e) has a workforce that is under pressure and under-appreciated and that lacks key skills.

Three immediate actions? The Commissioners identified three areas where immediate action can be taken: 1) to provide more Home Care Packages to reduce the waiting list for higher level care at home; 2) to respond to the significant over-reliance on chemical restraint in aged care, including through the seventh Community Pharmacy Agreement; and 3) to stop the flow of younger people with a disability going into aged care, and speed up the process of getting out those young people who are already in aged care.

Quality and safety considerations to be addressed in the Final report: According to the media release announcing the release of the report, most of the Commission's work on quality and safety considerations will be in the Final Report (which is due by 12 November 2020).

[Sources: *Interim Report: Neglect*; media release 31/10/2019; 31/10/2019]

Broader governance implications?

In a statement, the Governance Institute said that the report not only underscores the importance of 'proper governance' in the aged care sector but has broader governance implications including the following.

- The Governance Institute says the report serves to underline the 'common learnings from the banking and financial services royal commission, particularly around the importance of managing nonfinancial risks, such as operational risks and staff conduct'.
- In addition, the Governance Institute argues that the report also highlights the need for whistleblower protections to be further strengthened. Governance Institute CEO Megan Motto said 'It is vitally important that whistleblowers are able to make disclosures about unlawful, negligent or unethical behaviour without fear of reprisal. We have long-supported the position that whistleblowing needs to be addressed in its own stand-alone act, which enshrines these protections'.

[Source: Governance Institute media release 31/10/2019]

In Brief | The US is on track to exit the Paris Agreement? The US has reportedly notified the UN of its intention to withdraw the United States from the Paris Agreement. The withdrawal process will reportedly be completed one day after the 2020 US Presidential election on 4 November 2020.



Separately, more than 11,000 scientist signatories from around the world, have issued a paper warning that 'planet Earth is facing a climate emergency'

[Sources: The New Daily 05/11/2019; BioScience 05/11/2019; The ABC 05/11/2019; [registration required] The AFR 05/11/2019]

Other News

'Green Tape' review to be led by Professor Graeme Samuel: The government has announced an independent review of the Environment Protection and Biodiversity Conservation Act 1999

Minister for the environment Sussan Ley has announced the second ten year independent statutory review of the Environment Protection and Biodiversity Conservation Act (1999) (EPBC Act) to ensure it remains 'fit for the future within the context of our changing environment'. The EPBC Act requires there be an independent review at least once every 10 years.

The aim of the review, Ms Ley said is to 'tackle green tape and deliver greater certainty to business groups, farmers and environmental organisations'. Ms Ley said that currently, delays in EPBC decisions are estimated to cost the economy around \$300 million a year and frustrate both business and environmental groups.

Writing in The AFR, Ms Ley commented that the 'review will not be about throwing away the rules that protect our environment, but it will offer a sensible and much needed-opportunity to cut through the green tape that can strangle the very objectives of the act. Over the next year, the detailed review of the act will go much further and seek to enhance its efficiency and effectiveness by making decisions simpler: for agriculture, businesses and governments'.

Who will conduct the review: Professor Graeme Samuel AC will conduct the independent review, leading an expert panel that includes Mr Bruce Martin, Dr Wendy Craik AM, Dr Erica Smyth AC and Professor Andrew Macintosh.

Terms of Reference: The review will consider the operation of the Act and the extent to which the objects of the Act have been achieved, as well as make recommendations for improvement to ensure it remains fit for purpose. The review will be guided by the principles of: a) protecting Australia's unique environment through strong, clear and focused protections; b) making decisions simpler, including by reducing unnecessary regulatory burdens for Australians, businesses and governments; c) supporting partnerships to deliver for the environment, supporting investment and creating new jobs; d) improving transparency to ensure better use of information, accountability and trust in the system, and; e) streamlining and integrating planning to support ecologically sustainable development.

Next steps: Professor Samuel will be releasing a discussion paper in November, and begin initial stakeholder meetings shortly thereafter.

Timeline? An 'indicative review timeline' on the [dedicated review website](#) indicates that the a draft report is expected to be released in June 2020 with a final report delivered by October 2020.

[Sources: Minister for the Environment Sussan Ley media release 29 October 2019; Review website; [registration required] The AFR 03/11/2019]