Governance News: COVID-19 Special Edition
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COVID-19: Key Developments

Top Story | Latest COVID-19 Government stimulus package: new support for business

COVID-19 Federal, State and Territory packages: To assist readers in staying up to date with the changing landscape and directions issued in each State and Territory MinterEllison has released an updated report summarising key measures. The report is current to 3 April 2020 and will be updated regularly.

The Report can be accessed via the MinterEllison website here.

Top Story | COVID-19: Immediate workplace needs and planning for the future

MinterEllison has released an article highlighting some of the current issues for workplaces in planning for and responding to the COVID-19 pandemic. The article can be accessed on the MinterEllison website here.

Top Story | COVID-19: Easier faster access to credit for small business

New regulations implementing a temporary six month exemption from responsible lending obligations for Australian Credit Licensees are now in force. MinterEllison has released an article summarising the new measures and providing some insights into the implications industry. This can be accessed on the MinterEllison website here.

Top Story | COVID-19: The AICD has identified six key areas in need of urgent reform

Key Takeouts

- The Australian Institute of Company Directors (AICD) has identified six areas in which it considers urgent reform is required to support companies and their directors, through the COVID-19 pandemic. Namely: 1) continuous disclosure and securities class actions; 2) reporting; 3) general meetings; 4) regulatory enforcement; 5) reform agenda/consultations; and 6) not for profits and charities.
- Among other measures, the AICD proposes that a temporary 'safe harbour' from liability for directors and companies be implemented to shield them from the risk of legal actions in connection with earnings guidance or forward-looking statements about company performance made in the context of the COVID-19 pandemic.
- The AICD has also called (among other things) for ASIC to temporarily pause its 'why not litigate?' approach to enforcement, and for clarity around ASIC's approach to director decision making during the COVID-19 crisis.

Overview: AICD's six reform proposals

The Australian Institute of Company Directors (AICD) has identified six key areas where it considers that urgent reform is needed to support companies and directors through the pandemic. A high level summary of the AICD's proposals is below.

1. Securities class actions and continuous disclosure: proposed introduction of a temporary safe harbour for directors and companies

The AICD considers that meeting continuous disclosure obligations to be a particular challenge for boards and directors in light of the 'extreme market volatility and ongoing uncertainty' caused by the COVID-19 pandemic.

'The provision of earnings guidance and general forward-looking information about company performance that will not fall foul of the law has become very difficult given the uncertainty facing companies and the broader economy' the AICD writes. In addition, 'the circumstances generate a significant risk of opportunistic securities class actions, creating another significant board and company distraction in the current environment'.

To address these issues, The AICD proposes that the Treasurer should exercise his new power to temporarily amend the Corporations Act 2001 (Cth) to:

- Bar ASIC and shareholders from bringing an action: The AICD proposes that the Treasurer should exercise his new power to temporarily amend the Corporations Act 2001 (Cth) to provide that that no action can be brought against listed disclosing entities or their directors or officers in relation to earnings guidance or forward-looking statements about company performance, that are made in the context of the COVID-19 pandemic.

  It's proposed that the suggested amendment would cover any claim or proceeding at Federal, State or common law level in relation to a breach of continuous disclosure or misleading and deceptive conduct in relation to earnings guidance and forward-looking statements connected to COVID-19.

  It would apply both to actions initiated by the Australian Securities and Investments Commission (ASIC) and to shareholders.

  In proposing this change, the AICD makes clear that it would be limited to forward looking statements or earnings guidance. Companies would still need to disclose where they have actual figures or information to update the market with – eg in relation to debt covenants, the loss of a material contract, or material changes to their workforce.

  The AICD observes that this approach would align with the approach taken by the US and Canada in regulating forward looking statements.

- **Bar shareholders (but not ASIC) from bringing an action?** In the alternative, the AICD suggests that the Treasurer should exercise his power to bar actions initiated by shareholders in connection with earnings guidance or forward-looking statements made in the context of the pandemic, but preserve ASIC's ability to bring an action in appropriate circumstances.

  The AICD suggests that ASIC could then provide guidance on the way in which it intends to regulate disclosure in the current COVID-19 environment, to provide 'some comfort to organisations grappling with very difficult disclosure judgements'.

[Note: The AICD's proposal includes proposed working for the amendment to the Corporations Action. See: Dealing with continuous disclosure in COVID-19 environment: AICD proposal for a temporary safe harbour at p2.]

Preferable to the current approach

The AICD considers that the proposed change will achieve a better outcome than the alternative.

'While the ASX's updated guidance has recommended that companies simply withdraw all guidance to the market, we believe a better and more sustainable approach is to encourage bona fide efforts from companies and their officers to inform the market that are appropriately protected from subsequent claims or proceedings. This will become even more important as consensus starts to develop, which may lead to a gap between market and company expectations and potentially require a corrective disclosure from the company' The AICD states.

Further, as the change would be temporary, there is no danger that it would have lasting impacts on the existing continuous disclosure scheme.

Response to the proposal

The AFR reports that a number of prominent directors have expressed support for the proposed changes but that neither CGI Glass Lewis nor the Australian Council of Superannuation Investors (ACSI) are supportive of the proposed change.

Glass Lewis reportedly characterises it as a 'classic case of attempting to never let a good crisis go to waste'. 'Investors are right to be cautious of the pandemic being used for a legal land grab…Whilst the continuous disclosure regime puts a heavy burden on directors, investors' rights to be fully informed on the financial position and prospects of ASX-listed companies should be protected'.

In a similar vein, ACSI CEO Louise Davidson is quoted as saying that 'continuous disclosure provisions are fundamental to market integrity and should not be diminished, even on a temporary basis…The ASX has already clarified how companies should manage continuous disclosure in the current environment. Current disclosure obligations do not require companies to predict the unpredictable. When companies are aware of material information, the law is clear and should not be undermined. The accuracy of corporate disclosures is crucial in the current market. These changes will provide protection for companies making misleading disclosures.'

2. Reporting: Proposed extension on reporting deadlines

Given the challenges that COVID-19 poses for organisations, including their auditors, the AICD has called for reporting deadlines for companies who are balancing on 31 March 2020 and for those entities whose financial year ends 30 June to be extended. The AICD suggests that ASIC could provide relief on a class basis, and in doing so, would be in 'lock step' with international regulators.

In addition, the AICD says that it is in dialogue with interested stakeholders (including regulators) around other challenges connected with making accurate financial assessments in the current economic environment eg difficulties in completing audited reports and directors' declarations as to solvency and assessment of going concern.

3. General meetings: Proposed amendments to the Corporations Act to provide clarity/certainty

To provide clarity and certainty for companies, the AICD proposes that the Treasurer makes temporary modifications to the Corporations Act to: a) allow companies to hold virtual general meetings that are conducted solely online; b) extend the deadline by which companies must hold an AGM after the end of the financial year from five to seven months; c) enable companies to postpone or cancel already convened meetings; and d) reduce the general meeting notice period for both listed and unlisted companies.

The AICD has also suggested a new replaceable rule in company constitutions that would give boards the temporary ability to amend their constitution to deal with issues such as postponing an AGM, holding virtual meetings and similar matters.

4. Moratorium on regulatory change and consultations

The AICD has asked the government and regulators to pause both regulatory reforms and consultations that are not time critical and/or necessary to protect consumers or the market. 'It is crucial that distractions and additional costs are reduced at this time' the AICD writes.

5. Regulatory and enforcement posture: A temporary pause on ASIC's 'why not litigate?' enforcement approach?

The AICD states that directors, under immense pressure, need to be able to focus on urgent and difficult issues associated with guiding their companies through the crisis, including making rapid decisions. As such, the AICD considers that 'clarity from regulators' around their approach to board decision-making in the current context would be welcome. 'Flexibility and pragmatism are needed in the current environment, and we have encouraged regulators such as ASIC to re-consider their 'why not litigate' approach in light of COVID-19' the AICD states.

In addition, the AICD considers that clarity from ASIC regarding how it will enforce directors' duties in light of the temporary safe harbour from insolvent trading would also be welcome.

6. Not-for-profits and charities: The need for a nationally consistent regulatory approach

The AICD has called for a 'nationally consistent statement' outlining the regulatory approach the Australian Charities and Not for Profits Commission (ACNC) and state and territory regulators will take to various issues during the COVID-19 crisis. The AICD has called for the statement to address the following issues:

- The extension of the insolvent trading safe harbour to all ACNC regulated entities and state and territory regulated incorporated associations.

- A consistent approach to fundraising laws to ensure that red tape is not an obstacle to fundraising.

- A consistent approach to financial reporting and filing extensions.

[Sources: AICD article 02/03/2020; AICD proposal for temporary continuous disclosure safe harbour; [registration required] The AFR 06/03/2020]
https://aicd.companydirectors.com.au/resources/covid-19/covid-19-shifting-regulatory-landscape

COVID-19: The Treasurer has announced changes to the JobKeeper Payment policy to enable more charities to access the payment

Treasurer Josh Frydenberg has announced that legislation to be introduced into the Parliament this week to implement the government's JobKeeper Payment policy, will also ensure that charities that are registered with the national regulator will be eligible to access the payment, if they have suffered a 15% decline (as opposed to a 30% decline for other businesses) in turnover as a result of COVID-19.

The Treasurer said that the 'reduced threshold at which a charity is considered to be substantially affected by the coronavirus, as compared to businesses and other not-for-profits, will support a sector which is expected to have a significant increase in demand for its services'.

The Treasurer said that the decision to reduce the threshold follows conversations with the charity sector including ACOSS, the Salvation Army and Catholic Social Services Australia.

Mr Frydenberg said that eligible businesses and charities can apply for the payment online and are able to register their interest via ato.gov.au.

[Source: Treasurer Josh Frydenberg media release 05/04/2020]

COVID-19: $800 million in additional funding available for the department of health

Finance Minister Mathias Cormann announced that $800 million has been made available, via Advance to the Finance Minister Determination (No. 3 of 2019-2020), to the Department of Health to fund the further procurement of masks and other emergency medical or emergency health equipment to deal with the impact of COVID-19 in Australia. under the determination.

The total Advance determinations previously issued for the 2019-20 year are as follows:

- $100 million was issued under Appropriation Act (No. 2) 2019-20 to the Department of Health on 4 March to fund the procurement of masks and other emergency medical or emergency health equipment for the National Medical Stockpile as part of the Australian Health Sector Emergency Response Plan for Novel Coronavirus.

- $200 million was issued under Appropriation Act (No. 2) 2019-20 to the Department of Health on 9 March to fund the further procurement of masks and other emergency medical or emergency health equipment for the National Medical Stockpile as part of the Australian Health Sector Emergency Response Plan for Novel Coronavirus.

[Sources: Finance Minister Mathias Cormann media release 03/04/2020; Advance to the Finance Minister Determination (No. 3 of 2019-2020)]

COVID-19: States and Territories to legislate a mandatory Commercial Tenancy Code to support SMEs during the pandemic

Prime Minister Scott Morrison announced on 7 April, that the National Cabinet had agreed that a mandatory Commercial Tenancies Code will be legislated and regulated as is appropriate in each state and territory jurisdiction.

The arrangements will be overseen through a binding mediation process.

Details

- **Aimed at small and medium sized enterprises:** Mr Morrison said that the Code will apply to tenancies where the tenant or landlord: a) is eligible for the JobKeeper Program; and b) have a turnover of $50 million or less.

- **'Good faith leasing principles':** Mr Morrison said that the new Code would be underpinned by 'good faith leasing principles' including the principle that 'landlords must not terminate the lease or draw on a tenant's security' and that 'tenants must honour the lease'.

- **Rent relief?** Mr Morrison said that the Code will require that landlords will be required to reduce rent proportionate to the trading reduction in the tenant's business, through a combination of waivers of rent and deferrals of rent for the duration of the pandemic.

  Waivers of rent must account for a minimum of 50% of the reduction in the rental provided to the tenant during that period and deferrals must be covered over the balance of the lease term and in no less period than 12 months (sic: 24 months). This means, that if the lease term goes for three years, tenants will be able to spread the deferred rent over the three year period. Where the lease has only six months to run, tenants would still have a minimum of 12 months to pay the deferred rent.

Mr Morrison concluded by calling on landlords and tenants to 'sit down and work it out'.

Banks are expected to 'come to the table'

Mr Morrison called on banks, including international banks operating in Australia to 'come to the table here and provide the support to the landlords'. The Prime Minister said that he expects international banks to be 'providing the same levels of support and cooperation as we are seeing from the Australian banks who are aware of these arrangements'.

[Source: Prime Minister Scott Morrison Transcript of the press conference at Parliament House 07/04/2020]

Regulators

ASIC has commenced proceedings against the Mayfair 101 group in connection with (allegedly) deceptive promotion of two debenture products

The Australian Securities and Investments Commission (ASIC) has commenced proceedings in the Federal Court against Mayfair Wealth Partners Pty Ltd (trading as Mayfair Platinum), and Online Investments Pty Ltd (trading as Mayfair 101) (collectively Mayfair) in connection with the promotion of two debenture products to wholesale investors.

Broadly, ASIC alleges that the advertisements on Mayfair's websites and online media were misleading or deceptive because they falsely represented that:

- the products were comparable to bank term deposits and had a similar risk profile to term deposits when they were debentures with a significantly higher risk profile

- the principal investment would be repaid in full on maturity, when investors might not receive capital repayments on maturity or at all, and because Mayfair could elect to extend the time for repayment for an indefinite period

- the products were specifically designed for people seeking 'certainty and confidence in their investments', when investors might not receive interest and/or capital repayments, and could lose some, or all, of their investment

- the products provide capital growth opportunities, when they do not

Relief sought: ASIC is seeking injunctions to restrain the publication of similar statements and pecuniary penalties in relation to the alleged false or misleading representations and ancillary orders, including costs.

[Note: The Concise Statement and Originating Process set out ASIC's allegations and the relief sought in more detail.]

Separately On 11 March 2020, Mayfair Platinum suspended payment of capital redemptions to investors in the products due to liquidity issues. In light of this, ASIC is also seeking an interim injunction to restrain the Mayfair from promoting and issuing the products while redemptions to existing investors remain suspended. ASIC's application for an injunction will be heard by the Federal Court on 14 April 2020.

[Sources: ASIC media release 06/04/2020; [registration required] The AFR 07/04/2020; [registration required] The Australian 07/04/2020]

COVID-19: ASIC has raised concerns about some real estate agents pressuring tenants to apply for early access to their superannuation in order to continue to pay their rent

The Australian Securities and Investments Commission (ASIC) has written to the real estate institutes in each state outlining concerns about some real estate agents who are advising tenants financially impacted by COVID-19 to apply for early release of their superannuation in order to continue paying their rent.

ASIC is concerned that the conduct may constitute unlicensed financial advice in contravention of section 911A of the Corporations Act 2001 (Cth); or not be in the best interests of individuals in contravention of section 961B of the Corporations Act.

The letter notes that the Corporations Act imposes significant penalties for a contravention of section 911A. For individuals this can be a maximum of 5 years imprisonment, and/or a fine of up to $126,000 (600 penalty units), and for corporations a fine of up to $1,260 million dollars (6000 penalty units).

The letter cautions that if contraventions of the licensing requirements of the Corporations Act are found, 'ASIC will not hesitate to act swiftly to protect vulnerable consumers'.

In a separate media release, welcoming ASIC's action the Australian Council of Trade Unions (ACTU) said that ASIC's letter adds weight to concerns already raised with the Real Estate Institute of Australia by ACTU President Michele O'Neil. Ms O'Neil said 'The ACTU has no tolerance for forced evictions, the impoverishment of tenants or pressures being placed on Australians to draw down of their retirement savings to pay rent at this time of crisis'.

[Source: ASIC media release 03/04/2020; ACTU media release 03/04/2020]

Corporate Social Responsibility

Macquarie Group Foundation to donate $A20 million to COVID-19 relief efforts

Macquarie Group's Macquarie Group Foundation will establish a $A20 million fund to support COVID-19 relief efforts in Australia and across the regions in which Macquarie operates.

An immediate donation of $A2 million to will be made to the Global FoodBanking Network to address critical food security needs across its network of more than 900 food banks in over 40 countries, including meals for children as many schools around the world remain closed.

Other initiatives for the fund in the coming weeks and months may include support for frontline medical staff, diagnosis and treatment for patients, sanitation and hygiene initiatives to prevent further disease spread and initiatives to support workers and businesses in restarting economic activity.

Announcing the funding, Macquarie Group CEO Shemara Wikramanayake, said that the 'COVID-19 crisis is placing sudden and significant human and economic stress on communities around the world. The decision to make this additional donation, over and above the Foundation's usual activities, is in recognition of the exceptional challenges that COVID-19 is presenting right now, and will present in the medium term, as communities turn their focus to economic recovery'.

[Sources: Macquarie media release 06/04/2020; [registration required] The Australian 06/04/2020]

Institutional Investors and Stewardship

COVID-19: State Street has provided guidance for companies on its engagement priorities for 2020

Writing in Harvard Law School Forum, CEO and President of State Street Global Advisors Cyrus Taraporevala, has provided guidance to companies on State Street's engagement priorities in light of the COVID-19 pandemic.

Some Key Points

- **AGMs:** State Street encourages companies to follow guidance from government authorities to either postpone AGMs or shift to virtual (online only) meetings to contain the spread of the virus. State Street expects that where virtual meetings are held, shareholders will be afforded 'all the rights and opportunities' and ability to actively participate/interact with the board as they would have in a physical meeting.

- **ESG issues**: Though State Street remains committed to ensuring that the companies in its portfolios address environmental, social and governance (ESG) issues as a matter of good business practice and long-term financial performance, it also accepts that in light of the pandemic, engagement conversations will necessarily shift to more 'immediate ESG issues' including employee health, serving/protecting customers and ensuring overall safety of supply chains.

- **Suggested approach to material ESG issues**: State Street considers that 'material ESG issues must be part of the bigger picture' and clearly articulated within overall business strategy, even in the current circumstances. State Street therefore encourages companies to:

    - **refrain from taking a short-term approach to risk** (ie undertaking 'undue risks that are beneficial in the short term but harm longer-term financial stability and the sustainability of your business model'); b) communicate to investors COVID-19's short, medium and potential impact on the business, overall operations and supply chains (including management preparedness and scenario-planning/analysis);

    - **provide detailed and fulsome communication about the impacts to investors:** State Street encourages companies to communicate to investors the short, medium and potential impacts of COVID-19, the impact on overall operations and supply chains and to share details of management's preparedness (including scenario-planning and analysis).

    - **communicate how** COVID-19 might impact or influence the company's approach to material ESG issues as part of longer term business strategy.

- **Committed to engage with companies on their approaches weathering the crisis from a financial perspective**: State Street accepts that directors are focused in the short term, on their company's financial resilience and that many companies are looking at reducing their capital spending, share buybacks, dividend payments and expenses. State Street says that it accepts that balancing the diverse needs of different stakeholders will differ by company, industry and region and is committed to engaging with companies to assist them in 'thinking through' the short/longer-term implications of these decisions.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 06/04/2020]

Meetings and Proxy Advisers

Santos AGM result: Shareholder climate resolutions received 40%+ proxy support

Santos Ltd held its AGM on 3 April. Because of the COVID-19 restrictions, shareholders were unable to attend the meeting in person. Instead, the meeting was webcast live and provision was made for shareholders to submit questions electronically. All resolutions were decided based on proxy votes submitted ahead of the meeting.

Meeting outcomes: All board-supported resolutions passed. Two shareholder-requisitioned climate-related resolutions received 43.9% and 46.35% support respectively.

Resolutions

- **Election/re-election of directors:** Guy Cowan and Yasmin Allen were each re-elected with 86.29% and 87.58% support respectively. Yu Guan and Janine McArdle were elected to the board with 99.39% and 99.5% support respectively.

- **Remuneration:** The remuneration report received 97.9% of votes in support (2.09% against). A resolution granting share rights to Santos Managing Director and CEO Kevin Gallagher received 97.89% support (2.11% against).

- **Shareholder requisitioned climate resolutions:** The Australasian Centre for Corporate Responsibility (ACCR) filed three resolutions (on behalf of shareholders). The resolutions were not supported by the Santos board.

    1. **Constitutional Amendment:** A special resolution to amend the constitution to allow shareholders to bring ordinary resolutions received 6.68% support.

    2. **Two ordinary resolutions:** ACCR also filed two climate related resolutions.

        The first called on Santos to align its operations with the goals of the Paris agreement including setting Scope 1,2 and 3 emissions reduction targets and the second called on the company to review its industry association memberships and recommended that it suspend its membership of associations whose climate lobbying stance is inconsistent with the goals of the Paris agreement.

        The Paris Climate goals resolution received 43.39% proxy support. The climate lobbying resolution received 46.35% lobbying proxy support.

        These resolutions were not formally put to the meeting, because the constitutional amendment failed to pass.

[Note: The full text of the resolutions is available on the ACCR website here.]

Reportedly the shareholder resolutions were supported by proxy advisers Institutional Shareholder Services and CGI Glass Lewis, as well as the Australian Council of Superannuation Investors (ACSI), Pensions & Investment Research Consultants and Regnan. However, they were reportedly both opposed by Santos' two major shareholders, China's ENN and Hony Capital.

Woodside Petroleum will face similar resolutions at its AGM on April 30.

Shareholder participation during the meeting: The AFR reports that the two 'major concerns' at Santos' first online AGM were: 1) the impact of the plunging oil price; and 2) environmental issues relating to climate resolutions and its controversial Narrabri gas project in NSW. The AFR comments that the level of support for the climate resolutions was possibly unexpected given the other pressures on the company after the collapse of oil prices and global markets.

Response from climate groups following the meeting

- The AFR quotes The **ACCR** as welcoming the 'unprecedented' level of shareholder support for the resolutions.

- The AFR quotes **Investor Group on Climate Change (IGCC),** which represents institutional investors with over $2 trillion under management, as saying that the result is more 'significant' than the BHP resolution on lobby groups in 2019.

- Climate group **Market Forces** issued a media release arguing that the company's failure to support the resolutions 'demonstrates the company has no ability or willingness to transition to a business model consistent with holding global warming to 1.5°C' and calling on members of superannuation funds with investments in Santos, to contact their fund requesting that it detail plans 'to sell all holdings in Santos and other companies that are actively undermining efforts to hold global warming to 1.5°C'.

- **Santos' response?** The AFR quotes Santos CEO Mr Gallagher as saying that the result is 'good feedback for the board' and that 'the board will work with that now: watch this space and see where that goes'.

[Source: Santos AGM announcement: results of AGM 03/04/2020; [registration required] The AFR 03/04/2020; Market Forces media release 03/04/2020]

In Brief | Impact of COVID-19 restrictions on AGMs: ISS has released a white paper summarising guidance issued by regulators in several countries to listed companies concerning AGMs in light of the COVID-19 threat. Overall, ISS has found that the number of virtual AGMs has more than doubled (so far) in response to the pandemic

[Source: [registration required] ISS white paper: Annual General Meetings & COVID-19]

Financial Services

COVID-19: APRA has stopped short of directing banks and insurers not to pay dividends

On 7 April the Australian Prudential Regulation Authority (APRA) wrote to authorised deposit taking institutions (ADIs), general insurers, life companies and private health insurers, outlining its expectations that they 'limit discretionary capital distributions in the months ahead, including deferrals or prudent reductions in dividends'.

APRA's expectations

- **Prudent approach:** APRA says that it expects that all ADIs and insurers will: a) take a forward-looking view on the need to conserve capital and use capacity to support the economy; b) use stress testing to inform these views, and give due consideration to plausible downside scenarios (periodically refreshed and updated as conditions evolve); and c) initiate prudent capital management actions in response, on a pre-emptive basis, to ensure they maintain the confidence and capacity to continue to lend and support their customers.

- **Dividends:** APRA expects that 'ADIs and insurers will seriously consider deferring decisions on the appropriate level of dividends until the outlook is clearer. However, where a Board is confident that they are able to approve a dividend before this, on the basis of robust stress testing results that have been discussed with APRA, this should nevertheless be at a materially reduced level. Dividend payments should be offset to the extent possible through the use of dividend reinvestment plans and other capital management initiatives'.

- **Executive bonuses:** APRA also expects that Boards to be 'mindful of the current challenging environment' and to appropriately limit executive cash bonuses.

No plans to compel lenders to suspend dividends: Ahead of APRA's guidance, The AFR quoted an APRA spokesperson as saying that 'for the time being, decisions on dividends and variable remuneration remain matters for boards to determine in line with their obligations under APRA's prudential framework.' Reportedly APRA has been in talks with financial institutions about their proposed approaches.

The AFR also noted that the Prime Minister Scott Morrison has said that the government is not considering directing the banks to suspend dividend payments 'at this point' but that the policy is under consideration by the Council of Financial Regulators.

Shareholder concerns: The AFR quotes Fiona Balzer, policy manager at the Australian Shareholders Association, as saying that she hopes Australian regulators continue to refrain from suspending bank dividends. 'The banks need to maintain solvency and adequate capital, of course, but we need to remember that our economy is so interrelated. Bank dividends are precisely the sorts of dividends that people are relying on to cover their living expenses' Ms Balzer said.

Reportedly, Ms Balzer said that were dividends suspended 'hundreds of thousands of self-directed investors could be forced onto the welfare state', to make up for the lost income in the form of franked dividends.

Possible impact of the RBNZ direction that banks suspend dividends and similar moves by international regulators: Following similar moves by UK and European regulators, which have asked banks to temporarily suspend dividends and share buy backs, New Zealand has also directed its banks to stop paying dividends. The FT suggests that this could make it harder for larger lenders, CBA, ANZ, Westpac and NAB to maintain their high dividend payouts (because it could put pressure on their relationship with the Reserve Bank of New Zealand).

[Sources: APRA media release 07/04/2020; letter to industry 07/04/2020; [registration required] The AFR 02/04/2020; 07/04/2020; [registration required] The FT 02/04/2020; [registration required] The Australian 07/04/2020]

Singapore | HSBC is reportedly under pressure from Hong Kong based retail shareholders following the announcement that it has cancelled its annual dividend

Context: At the request of UK Prudential Authority, UK headquartered HSBC has cancelled its annual dividend to preserve capital (in light of the impacts of the COVID-19 pandemic.)

Reportedly one third of HSBC's shares are owned by retail investors in Hong Kong, many of whom rely on the bank's dividends for income.

Response from shareholders? The FT reports that a group of Hong Kong based retail shareholders – the Hong Kong retail investor collective – angered by HSBC's decision, are attempting to secure enough support among other shareholders to compel HSBC to hold an extraordinary general meeting. The group reportedly proposes to discuss with the lender how HSBC's Hong Kong business can be 'insulated' from UK regulators. The FT quotes Raymond Tang, a member of a large Facebook group of HSBC retail shareholders as saying that 'the decision [to withhold dividends] is unreasonable, this is about gathering Hong Kong people who have held the shares for a long time and fighting for our rights'.

Reportedly the group has also threated HSBC with possible legal action.

According to The FT, the group has about 2,700 members on Facebook but it is not clear how many shares in HSBC they control. Reportedly, Surich Asset Management, is understood to be advising 200 members of the group, though Surich does not itself own shares in HSBC.

HSBC's response? The FT reports that HSBC CEO Noel Quinn send an apology to the bank's Hong Kong shareholders last week, following the cancellation of the dividend, saying the lender did not take them for granted. An HSBC spokeswoman is quoted as saying that the bank 'deeply regrets' any harm caused by the suspension of the dividend, reiterating the move was at the request of UK regulators.

Should HSBC's headquarters move to Asia? The FT comments that the 'controversy' around the cancellation of the dividend for the first time in nearly 75 years has highlighted the lender's 'complicated situation' in Hong Kong, where it derives most of its profits before tax and reignited the debate over whether HSBC's headquarters should move to Asia, where it makes most of its revenue.

[Source: [registration required] The FT 07/04/2020]

Germany | Poor financial performance and recent sudden losses due to COVID-19 have reportedly prompted the German government to make changes to the supervisory board at Commzerbank

The FT reports that German government representatives on the supervisory board of Germany's second largest lender, Commerzbank — Markus Kerber (former investment banker and state secretary of Germany's interior ministry), and Anja Mikus (CEO of Germany's Nuclear Waste Disposal Fund) — will step down from their roles three years earlier than scheduled and be replaced by Jutta Dönges (co-head of Germany's Finance Agency) and Frank Czichowski (outgoing treasurer of state-owned development bank KfW).

According to The FT, the changes to the supervisory board have been prompted by the lender's persistently poor financial performance in the ten years since the global financial crisis (when it was bailed out by taxpayers) and by recent falls in the company's share price. Since the start of the coronavirus crisis, Commerzbank's shares have reportedly lost more than 55% to reach a 'new all-time low' of €3. The lender, with €464bn in total assets, now reportedly has a stock market value of less than €4bn.

Reportedly, Commerzbank is one of the biggest lenders to small and medium-sized companies in Germany, which are being hit particularly hard by the lockdown put in place to contain the pandemic.

[Source: [registration required] The FT 04/04/2020]

A new approach to credit reporting for the duration of the pandemic: The ABA has said mortgage deferral won't impact consumers' credit rating

The Australian Banking Association (ABA) has announced that banks have agreed on a new approach to credit reporting for the duration of the pandemic.

Consumers granted a six month deferral on loan repayments on their mortgage or other credit products (eg credit card), will not have their credit rating affected as a result of the deferral, if they were up to date with repayments prior to COVID-19.

For those customers who are already behind in repayments when they are granted a deferral due to COVID-19, banks will not report the repayment history information, and leave the field blank for the duration of the deferral period. When the COVID-19 repayment deferral period has ended, banks will determine how to report the repayment history information.

'There may be other factors which can affect a customer's credit rating, but customers accepting a COVID-19 loan repayment deferral can rest easy that the deferral will not be one of them' ABA CEO Anna Bligh said.

The announcement has been welcomed by the Financial Rights Legal Centre (FRLC). FRLC CEO, Karen Cox said 'people calling our advice services have so much to contend with right now: the stress of not being able to pay their bills, fears for their own health, and fears for loved ones. They should not have to worry about their ability to access credit when this is all over. We warmly welcome the ABA's announcement that their customer's credit reports will be quarantined from the impact of this crisis and we call on the rest of the finance industry to follow suit'.

[Source: ABA media release 06/04/2020]

The Australian reports that the ABA has said banks are willing to 'bridge the gap' to assist viable businesses impacted by COVID-19 to hold out until JobKeeper assistance flows through

The Australian reports that the Australian Banking Association has signaled that the banking sector is willing to extend credit to viable businesses on favourable terms, until the JobKeeper scheme comes into effect.

ABA CEO Anna Bligh is quoted as saying that 'banks will offer to bridge the gap wherever possible. For some businesses, more debt won't be the right answer but we are willing to throw a lifeline to people to get them through'. Reportedly Treasurer Josh Frydenberg welcomed the ABA's commitment saying that it would provide a bridge until the JobKeeper payments flowed through to employers.

[Source: [registration required] The Australian 06/04/2020]

COVID-19: The FSC has announced a commitment on behalf of participating member insurers to assist frontline healthcare workers to access life insurance

The Financial Services Council (FSC) announced a commitment on behalf of 'participating life insurance FSC member companies' to ensure that 'frontline healthcare workers' (including doctors, nurses and hospital staff, police, pharmacists, paramedics and age care workers) are not prevented from obtaining life insurance cover because of their exposure, or potential exposure, to coronavirus.

Under the agreement, exposure, or potential exposure, will not of itself be used to decline an application for cover, charge a higher premium, or apply a Covid-19 pandemic risk exclusion to any of the benefits offered. FSC CEO Sally Loane said that 'while not everyone will be able to get new cover for other unrelated reasons, this commitment means potential exposure to COVID-19 alone won't affect the cover these workers can get with participating life insurers'.

Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume welcomed the announcement saying, 'our frontline workers are doing an amazing job in this crisis, and it's vital that we're ensuring their work won't adversely affect their life insurance cover…I thank the FSC and insurers for their responsiveness on this issue.'

[Source: FSC media release 06/04/2020]

COVID-19: The ACCC has granted interim authorisation for insurance companies and brokers to work together to implement COVID-19 relief measures for eligible businesses

The Australian Competition and Consumer Commission has granted interim authorisation for insurance companies and brokers to work together to implement COVID-19 relief measures for certain small businesses. The authorisation applies to Suncorp, Allianz, and QBE Insurance, as well as any other insurers or insurance brokers who choose to take part (provided that they notify the ACCC).

The package includes a range of measures, including:

- enabling eligible business customers impacted by COVID-19 to defer their insurance premium payments for up to six months (for insurance premiums that fall due up until 30 June 2020);
- refunding business customers unused premiums for any insurance policy they need to cancel as a result of the pandemic;
- not charging administration or cancellation fees for cancelling insurance policies
- enabling all customers (including consumers, eligible small businesses and larger businesses' to receive a credit or refund for any unused insurance travel insurance premiums where travel has been cancelled due to the pandemic. No administration/cancellation fee will apply.

The ACCC will now seek feedback on the application and consider whether final authorisation should be granted.

[Source: ACCC media release 02/04/2020]

Rush on super? Industry is reportedly concerned that demand for the government's early access to super scheme will be greater than estimated, reportedly there have been calls for the RBA to undertake scenario modelling to assist industry to prepare

Rush on super? The Australian reports that by close of business 2 April (ahead of the formal commencement of the scheme), approximately 361,000 people (2.5% of Australian superannuation members) had already registered their interest with the Australian Taxation Office (ATO) for the early release of their retirement savings via the MyGov portal.

The high rate of demand has reportedly raised industry concerns that the government's estimated $27bn forecast demand is too low. Reportedly, industry estimates that the total to be drawn down under the scheme could be in excess of $50bn. Were this to occur, industry is concerned that it would place extreme pressure on superannuation funds, especially on smaller funds catering to members in the hard-hit retail, hospitality, tourism and entertainment sectors.

Reportedly the ATO has said it will update the sector on the numbers of members applying for early access to their savings on a weekly basis.

Calls for the RBA to undertake 'scenario modelling' of the impact of the government's policy? The Australian reports that Hostplus CEO David Elia has called on the Reserve Bank to undertake 'scenario modelling' of the impact of the government's proposed early release scheme for superannuation to assist the sector (and others) to prepare for the impact on liquidity.

'Many funds, such as Hostplus, have embraced the government's early release scheme and want to play their role in assisting members during this difficult time…If government estimates of a $27bn draw-down of super by millions of Australians is accurate, the industry will likely experience no liquidity issues. If the government is wrong, and the figure is more like $50bn estimated by some actuaries, then there will likely be a need for the RBA to provide some type of liquidity operation' Mr Elia is quoted as saying.

Ms Elia went on to say, 'The RBA, which is responsible for the financial stability of markets, should be encouraged to conduct further scenario modelling that incorporates varying levels of take-up rates around the early release scheme to determine what, if any, additional planning should be put in place…Based on these new government changes, wouldn't it be prudent for the RBA to simply examine this issue in more detail and ensure that it can continue to support the stability and orderly function of markets, which is in the best interests of every single Australian?'

The Australian comments AustralianSuper CEO has also raised concerns that the actual withdrawal figure could be much higher than Treasury's estimate of $27bn.

[Source: [registration required] The Australian 06/04/2020; 06/04/2020; 07/04/2020]

No pause in investigations? ASIC is reportedly continuing to pursue 21 investigations into superannuation funds

The Australian reports that the Australian Securities and Investments Commission (ASIC) is pursuing more than 21 investigations into superannuation funds: 16 investigations into retail funds (of which six are referrals from the Financial Services Royal Commission) and five investigations into industry funds.

The Australian quotes an ASIC spokesperson as saying, 'ASIC has made clear its commitment to enforcement…ASIC will maintain its enforcement activities and continue to investigate and take action where the public interest warrants us to do so against any person or entity that breaks the law.'

The Australian comments that this is adding to pressure on the sector, especially in light of the strong demand for the government's early access to superannuation scheme.

[Source: [registration required] The Australian 07/04/2020]

In Brief | COVID-19: Hostplus has updated its product disclosure statements to empower 'its Trustee with a broad discretion to suspend or delay unit pricing in extraordinary situations to ensure equity, fairness and balance in investment pricing and transactions in the best interests of all members'. Hostplus said that contrary to 'misinformed media speculation'...'this trustee power is not new' or 'exceptional' and that the change is unrelated to the timing of the government's early superannuation release scheme. The fund said it remains committed to supporting the government's early release scheme

[Sources: Hostplus media release 07/04/2020]

COVID-19: The ACCC has cautioned consumers about the uptick in reports of scammers targeting superannuation in the wake of the government's early release policy

The Australian Competition and Consumer Commission (ACCC) has cautioned consumers that there has been an uptick in the number of 'scammers' targeting superannuation following the government's recent announcement that people suffering financial hardship can have partial access to their superannuation from mid-April.

Since the government's announcement there have been 87 reports of these scams. In most cases the scammers are seeking to obtain personal information, including information that will help them fraudulently access the victim's superannuation funds.

The ACCC observes that thought there have been no losses to date, in 2019 Australians lost over $6m to superannuation scams with people aged 45-54 losing the most amount of money. Given the government's early access scheme, the ACCC considers it likely that a range of age groups will be targeted.

The ACCC's statement goes on to remind consumers that:

- The Australian Taxation Office is coordinating the early release of super through myGov and there is no need to involve a third party or pay a fee to get access under this scheme.

- Consumers are advised against following a hyperlink to reach the myGov website and instead to always type the full name of the website into their browser.

- Consumers should not give any information about their superannuation to someone who has contacted them, resist making a decision immediately and to 'consider who you might be dealing with'.

- Consumers who have provided information about their superannuation to a scammer are advised to immediately contact their superannuation fund. Where they have provided banking details, they should contact their financial institution. Consumers may also contact IDCARE, a free Government-supported service which will assist in developing a specific response plan.

The statement directs consumers to the Scamwatch website which includes information about where to make a report and what assistance is available.

[Source: ACCC media release 06/04/2020]

In Brief | The FT reports that US banks are expected to defend their plans to continue to pay dividends in submissions to regulators on the basis that cancelling dividends would be 'destabilising to investors'. Separately, in his annual letter to shareholders JPMorgan Chase CEO Jamie Dimon reportedly flagged that the bank may suspend its dividend for the first time in its history if economic conditions continue to worsen (ie if the US economy contracts by 35% in the second quarter and unemployment rises to 14%)

[Sources: [registration required] The FT 06/04/2020; 06/04/2020]

In Brief | APRA has written to applicants for new banking or insurance and superannuation licences to advise that it is temporarily suspending issuing new licenses for at least six months in response to the economic uncertainty created by COVID-19

[Source: APRA media release 08/04/2020]

In Brief | Consumer group CHOICE has called on private health insurers to go further than delaying premium increases until 1 October and instead commit to halving their premiums in light of the COVID-19 pandemic. This is justified, CHOICE argues both because people are unable to use the normal services that would allow them to claim on their private health insurance (ie reduced access to extras

services and cancellation of many elective procedures) and because 'insurers' costs will be going down as a result'

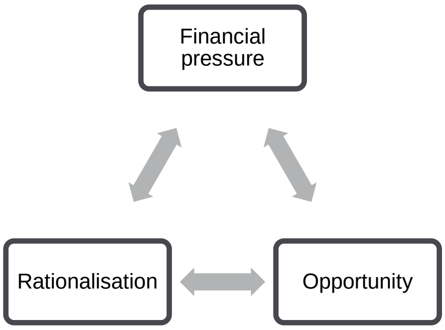
[Source: CHOICE media release 07/04/2020]

Risk Management

Culture and Conduct

Increased risk of corruption? NSW ICAC has released guidance for agencies to minimise the risks of corrupt conduct during the COVID-19 pandemic

The NSW Independent Commission Against Corruption (ICAC) has released guidance for public officials — Managing corrupt conduct during the COVID-19 outbreak — to draw attention to: a) the fraud and corruption risks that arise during periods of disruption and economic downturn; and b) measures that may assist in protecting government funds.



Why issue guidance on minimising corruption now? The 'fraud triangle'

The guidance points out that the COVID-19 pandemic and the related economic downturn have intensified all three factors that have been shown to be collectively conducive to fraud: (1) financial pressure, (2) opportunity and (3) rationalisation.

1. **Financial pressure:** Employees, suppliers and customers (and their families) may be experiencing actual or anticipated financial hardship due to COVID-19.
2. **Opportunity:** Agencies' controls and normal levels of supervision may weaken or cease to function in the current environment.
3. **Rationalisation:** The guidance suggests that perpetrators may find it easier to rationalise dishonest behaviour.

In addition, fraud and corruption risks may arise externally to the agency at specific points in the supply chain.

Suggested steps to minimise the risk of corrupt conduct occurring

The guidance includes suggested actions for agencies to consider implementing to minimise the risk of corrupt conduct occurring. Below is a high level summary of some of the key points.

Risk	Suggested actions
Risks associated with working from home	▪ To combat 'absenteeism and lapses in judgement' associated with isolation while employees work from home, its suggested that managers make occasional telephone or video conference contact with their staff. ▪ Prohibit staff from allowing family members to use agency hardware and systems and ask staff to refrain from using their home printer for confidential agency documents. ▪ Remind staff not to use social media to post photographs of their home office or work station.

Risk	Suggested actions
	▪ Make a record of agency IT equipment and other valuables that staff have borrowed to use from home. ▪ Establish protocols for using electronic signatures, especially if staff are used to paper forms and giving approval by applying a written signature.
Risks associated with procurement and purchasing	▪ If an agency needs to perform emergency procurement, at least two people should be involved in the process rather than having one official with end-to-end control ▪ If aspects of procurement need to take place outside the online finance system (eg if the normal financial delegate is offline or the system is inaccessible), decisions should be documented in an email/contemporaneous file note. ▪ Agencies should use existing management accounting reporting and data analytics to identify split invoices/payments, unusual transactions and unusual suppliers. ▪ To discourage theft of stock or other agency assets agencies are encouraged to maintain or even enhance their normal physical security measures and take steps to secure valuable assets and information while the workplace is unpopulated. ▪ Suppliers may have to rely on force majeure clauses in contracts. If contracts do not contain these clauses, agencies should be wary of forcing suppliers to meet impossible deadlines, which could encourage dishonest conduct.
Risks associated with cyber fraud and online hoaxes	In addition to adhering to the NSW Cyber Security Policy, agencies should: ▪ assume that any request to change a supplier's or employee's bank account number could be an attempted fraud (verify the request by telephoning the relevant supplier/employee, without relying on the contact information contained in a potentially false email message) ▪ be wary of adding new suppliers to the vendor master file, especially if they are not already on a NSW Procurement pre-qualified panel or scheme or if they have invoiced the agency without being issued a purchase order ▪ direct accounts payable staff to challenge any suspicious requests for payment, even if it purports to come from a senior manager or the agency head ▪ not pay invoices without performing a three-way match ▪ alert customers and citizens to attempts by third parties to impersonate the agency or its staff (make it easy for individuals to verify information by contacting the main switchboard of the agency) ▪ remind staff not to open emails or attachments or click on links from untrustworthy sources
Risk associated with rolling out stimulus	▪ If contracts have to be awarded quickly, agencies should still take the time to ensure that contractors understand and conform to public sector ethical obligations (an agency statement of business ethics).

Risk	Suggested actions
funding and new programs	▪ To the degree possible, giving a single official end-to-end control of a process should be avoided both to limit the risk of corruption/favouritism and to manage the risk that the program will stall if a key person becomes unwell/need to take carer's leave. ▪ Ensure accountability for actions/decisions by articulating clear responsibilities and lines of accountability. ▪ Project managers should appoint a minute taker or otherwise document key decisions, especially following meetings that are held via telephone or video conference, to ensure records are kept of key decisions and why they were made. ▪ The guidance makes a number of suggestions for dealing with risks associated with delivery of projects within compressed timeframes. For example, it's suggested that where it is not practical to conduct a comprehensive risk assessment at the outset of a program, management should still encourage staff to report obstacles/workarounds as they arise. With respect to recruitment, it's suggested that agencies unable to complete normal employment screening procedures before new staff commence, do so as soon as possible after commencement.

[Source: NSW ICAC guidance: Managing corrupt conduct during the COVID-19 outbreak]

Human Capital

In Brief | COVID-19: Safe Work Australia has released guidance for workplaces on managing COVID-19 risks, as well as a National Statement of Regulatory Intent setting out the enforcement approach that Work Health and Safety (WHS) Regulators (excluding Victoria) will take to ensure compliance with Australian WHS laws during the COVID-19 pandemic

[Sources: Safe Work Australia: National Statement of Regulatory Intent - COVID-19; Business Resource Kit – COVID-19; Mental health and COVID 19]

Supply Chain Risk

In Brief | Here to stay? NSW parliamentary Committee has recommended various improvements to the Modern Slavery Act 2018 (NSW), and to harmonise it with Commonwealth legislation, but ultimately recommends the NSW legislation be retained

[Source: NSW Standing Committee on Social Issues report: Modern Slavery Act 2018 and associated matters, Report 56 March 2020]