Governance News

COVID-19 Special Edition

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COVID-19 Key Developments

COVID-19: Incident notification during COVID-19: What employers need to know across Australia

MinterEllison has released an article covering the important change to OHS laws in Victoria, in connection with COVID-19 and the position across Australia. The full text of the article is available on the MinterEllison website here.

COVID-19: 'No economic reason' for workers at risk of having COVID-19 to go to work: Additional government income support for workers impacted by Victorian restrictions

Following the announcement of additional COVID-19 restrictions in Victoria, Prime Minister Scott Morrison has announced that the Federal government will fund a 'pandemic leave disaster payment' to help stop the spread of COVID-19. Announcing the measure, Mr Morrison said that it means that 'those who need to self-isolate as a result of an instruction by a public health officer, there is no economic reason for you to go to work'.

Details

- The payment of $1500 will be available to Victorian workers (Australian residents and citizens) at risk of having contracted COVID-19 (ie who have been directed to self-isolate), but who have no sick leave available to them.
- The same worker will be able to access the relief on multiple occasions as necessary.
- The Prime Minister has said that at this stage there is no end date for the measure – the support will be available for as long 'as long as the Government says it is there as a disaster'.
- This Federal support will supplement the existing income support that has already been implemented by the Victorian government.
- Workers will be able to apply over the phone.

The measure is linked to the state of disaster

At this stage, the Prime Minister has ruled out extending the Federal support measure to other states unless a state of disaster is declared. Mr Morrison said, 'this is a disaster payment. So if another state were to be in a position and God forbid they were that there was a disaster of the scale that we're seeing in Victoria, then a disaster payment of this nature, of Pandemic leave, would be entered into, but that would be done on the same basis of what's been, will be established with Victoria. So this is to deal with a disaster'.

No details on what other support measures may be implemented at this stage

On the questions of whether reductions in the JobKeeper and JobSeeker rate would be delayed and/or whether childcare support would be re-introduced in Victoria, the Prime Minister said that the government is considering options.

On the issue of childcare Mr Morrison said, 'I suspect we'll need to make some changes, but I won't be announcing those until they've been properly worked through and we get some greater clarity from the Victorian Government about who permitted workers are and what that will mean for demand at facilities and then how that can be worked through with the sector to ensure that they remain open, their businesses remain viable and that their workers are supported'.

On the issue of JobKeeper and JobSeeker payments Mr Morrison said, 'we're talking about something many weeks from now, and we'll be making further assessments of that. But the JobKeeper program is a national program. It applies in Cairns. It applies in Bunbury. It applies in Brunswick. So it will continue to run as a national program, and any specific issues that are relevant to Victoria, we would seek to meet together with the Victorian government'.

The ACTU has welcomed the government's announcement as a step forward, but has called for more to be done

ACTU Secretary Sally McManus said that the Pandemic Leave Disaster Payment 'is a step forward' but called on the government to do more.

> 'Any money for workers who are saving lives and saving jobs by staying home and doing the right thing is welcome, but this payment does not address the full scale of the problems which fully funded Paid Pandemic Leave would address. We need a new, temporary, paid leave entitlement so that working people will not lose wages or risk their job to isolate or get tested when they need to...We need federally funded Paid Pandemic Leave for all workers who need to get tested and isolate. That's how we ensure that this pandemic ends as quickly as possible with as few people infected as possible.'

Paid pandemic leave scheme?

Prior the Prime Minister's announcement the ACTU and the Business Council had jointly called on the government, 'together with the relevant states', to implement a national, paid pandemic leave scheme to combat the spike in COVD-19 transmission.

The joint letter states that the scheme should:

- 'Amend the Fair Work Act to incorporate a leave entitlement consistent with the decision of the Fair Work Commission in relation to the Aged Care Awards,
- Provide for reimbursement to business to facilitate the leave entitlement. Mechanisms such as those used for JobKeeper or the Paid Parental Leave payment appear appropriate,
- Funded by the Federal Government and where necessary the relevant state governments'.

[Sources: Transcript of press conference: Prime Minister Scott Morrison 03/08/2020; ACTU media release 03/08/2020; BCA media release 03/20/2020]

COVID-19: Federal Parliament will meet on 24 August as scheduled

Prime Minister Scott Morrison has confirmed that parliament will sit on the 24 August as scheduled.

'It will meet. I always said it would meet. And I meant that when I said it…When we made the decision about Parliament not sitting when it was next scheduled to meet, there were a lot of uncertainties. We've got a clearer view now, and we know the situation has actually become even more serious, but we believe we can put arrangements in place' Mr Morrison said.

Mr Morrison said that strict protocols will be in place to mitigate COVID-19 transmission risks.

'Most importantly, public health. If you bring together over 200 people plus staff into one place from all around the country, then obviously you've got to be very careful about the onward transmission from infected parts of the country and how that could then potentially operate going out into other states. So we will have some very strict protocols around that, and seeking the full compliance of all members with that process'.

[Source: Transcript of press conference: Prime Minister Scott Morrison 03/08/2020]

COVID-19: The Council of Small Business Organisations of Australia has called on the government to implement additional support measures, including financial assistance, to support Victorian small businesses in stage four lockdown

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

Diversity

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Top Story | The path to board diversity?

An expert panel discussed the value of board diversity 'beyond gender diversity', and the barriers to progress and gave some practical insights into the steps boards could consider to accelerate progress and reap the benefits.

Context

The Governance Institute of Australia and Watermark International Recruitment released the 2020 Board Diversity Index in May of this year. The report tracks the progress of ASX 300 boards towards improving board diversity in the broad sense – 1) gender diversity; 2) cultural diversity; 3) skills diversity; 4) age diversity; and 5) tenure – over the past six years.

The report proceeds on the basis that decision making within organisations is enhanced where there is a diversity of decision makers who bring a range of viewpoints, skills and experiences to the process. The report argues that this is of particular relevance in the context of responding to the cultural, remuneration and governance issues identified by the Hayne Commission as well as in the context of meeting the challenges/uncertainty of a continually changing business and governance landscape eg in the context of managing through the COVID-19 pandemic and the recovery period.

The full text of the report is here. Our summary of some of the key takeaways in the report is here.

Panel discussion: Expert insights into the issues arising out of the index

Key findings from the 2020 Board Diversity Index, the barriers to progress and insights into possible pathways forward were explored by an expert panel (speaker information is here), Chaired by Governance Institute CEO Megan Motto in July 2020.

Some Key Takeaways

There is broad consensus that diversity is valuable (but boards are not always proactive on the issue)

The 2020 Board Diversity Index indicated, and the panellists agreed, that overall boards accept the value of diversity in the broad sense – diversity of skills, cultural background, gender, age, tenure – in principle, and also accept that progress needs to be made on the issue. It was also agreed that to date, gender diversity has tended to receive more attention/more progress has been made on the issue, relative to other aspects of diversity.

A poll of webinar participants seemed to confirm that boards are at least thinking about diversity with most participants indicating that some aspects of diversity are on their own boards' radar. For example, 83% of participants said that skills diversity is a discussion point for their own board, 63% said that their board discusses gender diversity and 27% said that their board discusses cultural diversity.

Business consultant Warwick Cramer commented that it is increasingly accepted, and research increasingly supports the view that diversity, beyond gender diversity, adds value to organisations 'beyond optics'. That is, that diverse teams tend to perform better, in a financial sense, than their less diverse counterparts. Innovation and disruption, he said, are underpinned by diversity in thinking and decision making and as such, should be front of mind for companies.

Why hasn't there been more progress on the issue? Barriers to diversity

The barriers to progress on the issue was a key theme of the discussion. Issues raised by the panellists included the following.

- **Unconscious bias:** One barrier to increased levels of diversity on boards was agreed to be unconscious bias in various forms eg bias against female candidates and/or culturally diverse candidates. Non-executive director Caroline Waldron commented that the statistics on the issue speak for themselves. She added that it is important to think about diversity holistically and to acknowledge that some people are facing multiple levels of unconscious bias. 'Bamboo ceilings exist but don't get as much attention as the glass ceiling', Ms Waldron said. 'I don't like having two ceilings above my head and other will have more'.
- **Diversity (in the broad sense) is not integrated automatically into board recruitment processes:** Watermark International's David Evans said that boards rarely specify that they want to see a diverse slate of candidates when recruiting for a new board member, though they are open to the idea when prompted. In response to a question from a webinar participant concerning requests to include candidates with a disability, he said that the same is true. Boards don't ask, but are often open when prompted.

  Asked to comment on barriers to appointing Indigenous directors, Director Kate Russell observed that it is rare for organisations without an explicitly Indigenous focus/remit to think about including Indigenous candidates, despite the strong candidate pool. In addition, because so many candidates are younger, she observed, organisations may need to adapt their approach – for example, organisations may need to focus on building an internal pipeline to foster talent from within rather than seeking to appoint a new director immediately to the board.
- **Lack of flexibility in setting 'mandatory requirements':** On a related point, Ms Russell observed that when recruiting new board candidates, boards tend to be fairly rigid in setting mandatory requirements that are premised on the way they have always recruited, and that this tends to place value on particular skills/formal qualifications and to discount/devalue others, reinforcing the status quo. In order to get the right organisational 'fit' and to make room for a diverse range of voices, she suggested it might be necessary for boards to adopt a more flexible approach. For example, boards could think about fostering talent from within, and building a pipeline of prospective leaders. Boards could open up to enable younger prospective leaders to act as observers, to shadow directors, and to build familiarity and experience in dealing with boards over time.

  The need for boards to adopt a more flexible and open approach to recruiting prospective members was echoed by Business Consultant Warrick Cramer who observed that Australian boards also tend to be fairly closed to the idea of including a director with international, rather than domestic experience. Likewise, mandatory requirements often do not take into account the networks of experienced and knowledgeable people/organisations that directors bring with them.
- **Push back:** Another issue identified by the panel was potential push back from potential candidates. From a recruitment standpoint, diverse candidates could sometimes be wary of being perceived as having been included on a list of potential candidates to fulfil a diversity requirement/quota, rather than on their merits. Concern about being perceived differently/labelled was also observed to present difficulties in the context of measuring/monitoring progress towards diversity (beyond gender diversity). Though gender diversity is fairly visually apparent, other forms of diversity are less so, especially diversity in a cultural sense and therefore often requires people to self-identify.
- **Organisational culture, and a lack of inclusivity was also highlighted as an issue.** The panel agreed that it inclusive culture, a culture that values and

listens to diverse voices is key not only to recruiting but to retaining and reaping the benefits of having diverse voices on boards/within organisations. Ms Motto cited one example where a younger director had eventually ceased contributing to board discussion because of the way in which older members of the board tended to dismiss them – in this instance, the lack of inclusive culture/willingness to listen was, Ms Motto said, probably unconscious, but nevertheless indicated a lack of space for diverse voices to be heard.

Suggested ways to help tackle these issues

The panel talked through number of ways that boards can begin to tackle the various barriers to diversity, though there was agreement that the path forward is not straightforward.

'Culture is everything'

A key theme to emerge from the discussion was the importance of inclusive culture within organisations and on boards, that genuinely value and listen to diverse voices. In this context, the role of the leaders, and in particular the role of the Chair was agreed to be key.

- Building diversity and inclusion into thinking on recruitment: There was consensus that building diversity into recruitment policies, procedures and processes and shifting the focus to include broader skills sets requires the backing of leaders.

  Commenting on the recruitment process, and the way to ensure that boards place value on a broader range of skills, for example HR skills and change management skills (in addition to the necessary financial/accounting skills), Ms Waldron said that leaders have a key and a very practical role to play. They set the tone from the top and they are the ones who are able to ensure that recruitment and retention processes/policies value diversity.

  Ms Russell listed a number of practical steps boards could consider implementing including among others, introducing a version of the Rooney Rule (including at least one applicant from a diverse background for every other candidate).

- Building diversity and inclusion into thinking on boards more generally: Again, in the context of ensuring diverse voices are heard in the boardroom, the tone set by the Chair was identified to be key. The Panel agreed that Chair sets the tone and drives a speak up culture, in which diverse voices are encouraged, not dismissed. In addition, it was suggested that diverse board members have a role to play in ensuring that they take the opportunity to speak, when it's there, and to provide their perspective.

- Thinking about the customer can be a helpful check: Mr Cramer suggested that thinking about the customer is also helpful in this context. Thinking about how they are connecting with their team and with their customer base provides broader context for decisions, he said. One way to monitor progress towards diversity/inclusivity might be to photograph management teams – this could provide an instant snapshot of the diversity within the organisation as compared with the customer base.

- Candidates also have a role to play: Ms Waldron spoke about the active role that aspiring board candidates can take to increase their chances of appointment, referencing her own path to the board. Ms Waldron said that in order to be appointed, board members needed to be well-rounded and have a good mix of skills – that is, board members need to have core accounting and commercial skills as well as bringing other knowledge and experience. In this context, she suggested, experience with/familiarity with boards and board processes, qualifications in governance and building commercial skills all have a role to play.

Pathway to the board – the role of candidates in preparing for a board position

In response to a question from webinar participants, Ms Waldron spoke at some length about her own journey to becoming a director and the way in which she 'mapped' this journey. Ms Waldron said that she started by thinking about the skills and experience that a director would need to bring value to a board, compared this against her own skills, qualifications and experience, and then proactively targeted roles over a period of years, in which she could acquire missing skills/knowledge and experience.

Ms Waldron spoke in particular, about the importance of being familiar with the way in which boards function. In her own case, she built up experience in this area through a mixture of taking on professional roles – company secretary, general counsel and leading the risk and audit function – that would give her exposure/experience, and through undertaking formal governance qualifications.

At the same time, Ms Waldron emphasised the importance of networking and being open about your board ambitions.

What does best practice look like?

In light of recent media reports on the handling of sexual harassment, the black lives matter protests, and reports of COVID-19 related racism, Ms Motto asked NED Ms Waldron to comment on how boards can ensure that they are taking a 'best practice' approach to diversity within their own organisations Ms Waldron said that accepting the need for diversity to be broader than gender, and then monitoring and honestly assessing progress is key.

Boards should she suggested, should undertake their own diversity audit; set realistic targets and then report (honestly) against them.

However, monitoring, measuring and fostering diversity was acknowledged by the panel not to be straightforward.

[Source: This article is based on notes from the Governance Institute and Watermark Recruitment Panel Discussion: 'The pathway beyond gender diversity: Board diversity in all its forms' 30/07/2020]

In Brief | Diversity pays: A UK report has drawn a link between gender diversity and financial performance. The report argues that the persistent underrepresentation of women in leadership roles is costing both the UK economy an shareholders: 'If the companies with no women on their executive committees this year had performed with the same net profit margin as companies with over 33% women at this level, this would mean an additional £47 billion in pre-tax profit for the UK economy and shareholders'

[Source: Women count 2020: Role, Value, and Number of Female Executives in the FTSE 350 July 2020]

Disclosure and Reporting

ASIC review of 31 December 2019 financial reports released: entities continue to make 'unrealistic and unsupportable assumptions about future cash flows'

Key Takeouts

- The largest numbers of matters about which ASIC made inquiries relate to: revenue recognition (10 inquiries); and impairment of non-financial assets (9 inquiries).
- ASIC comments that the fact that entities continue to make 'unrealistic and unsupportable assumptions about future cash flows' is of particular concern in light of the impact that the COVID-19 pandemic is having on businesses.
- ASIC has called on directors and auditors to 'focus on impairment of non-financial assets in financial reports to ensure the market is properly informed about asset values and expected future performance implied by those values'.

The Australian Securities and Investments Commission has released the results of its review of financial reports for the year ended 31 December 2019.

ASIC reviewed 90 reports from listed entities and other public interest entities with larger number of users of their reports.

Some Key Points

- ASIC has made inquiries of 21 entities about 40 matters.
- Matters involving eight of the entities have been concluded without any changes to their financial reporting. Inquiries of the remaining 13 entities are continuing.
- The largest numbers of matters about which ASIC made inquiries relate to: revenue recognition (10 inquiries); and impairment of non-financial assets (9 inquiries).
- Other areas about which ASIC made inquiries were:
  - tax accounting (accounting for income tax): 4 inquiries
  - the adequacy of provisions for rehabilitation, warranty claims and employee benefits: 4 inquiries
  - the treatment of certain financial instruments: 4 inquiries
  - consolidation and equity accounting: 4 inquiries
  - 'other matters': 3 inquiries
  - business combinations: 1 inquiry
  - leases (sale and leaseback of a property): 1 inquiry
- Longer term trends: ASIC's risk-based surveillance of the financial reports of public interest entities for reporting periods ended 30 June 2010 to 30 June 2019 has led to material changes to about 5% of the reviewed financial reports. The main changes were to impairment of assets, revenue recognition and expense deferral.

Asset values and impairment testing

ASIC states that it continues to have concerns about the 'assessments of the recoverability of the carrying values of assets, including goodwill, exploration and evaluation expenditure, and property, plant and equipment'.

Particular areas of concern include: a) the 'reasonableness' of cash flows and assumptions; b) issues with the way in which some entities have determined the carrying amount of cash generating units; c) issues with the way in which some entities have estimated fair value; d) 'insufficient attention' being given to impairment indicators; and e) disclosure issues (eg failure to disclose sources of estimation uncertainty and 'instances where a reasonably foreseeable change in one or more assumptions could lead to impairment').

ASIC has called on directors and auditors to focus on impairment of non-financial assets

ASIC comments that the fact that entities continue to make 'unrealistic and unsupportable assumptions about future cash flows' is of particular concern in light of the impact that the COVID-19 pandemic is having on businesses.

'Directors and auditors need to focus on impairment of non-financial assets in financial reports to ensure the market is properly informed about asset values and expected future performance implied by those values' ASIC states.

[Source: ASIC media release 31/07/2020]

Meetings and Proxy Advisers

Top Story | New annual meeting requirements: Is your fund prepared?

Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019 introduced a new requirement for superannuation funds to hold annual member meetings and many trustees are set to hold their first meetings this year.

MinterEllison Partner Maged Girgis and Special Counsel Phillip Turner have written an article outlining the new annual members' meetings regime for funds and comparing it to the existing regimes for annual general meetings for public companies and for meetings of members of registered managed investments schemes.

The article includes expert guidance on the preparations trustees should be making ahead of their first meeting, taking into account, that many meetings will be held by electronic means given COVID-19 restrictions.

> [Note: This article, 'Annual Members' Meetings: One small step for member empowerment' was first published in LexisNexis' Superannuation Law Bulletin Vol 31 No 9&10 2020 and has been reproduced with permission]

You can download the full text of the article here.

COVID-19: Virtual AGMs and electronic execution given the nod for another six months, AIRA and the AICD have each separately welcomed the extension but have called on the government to do more

Treasurer Josh Frydenberg has announced that the government will extend temporary COVID-19 relief enabling electronic execution of documents and for AGMs (and other meetings prescribed under the Corporations Act) to be held virtually (ie entirely online) until 21 March 2021.

Announcing the extension of the measures, Mr Frydenberg said that the government had received feedback that they have enabled business to continue throughout the pandemic and have provided welcome certainty.

On the topic of meetings specifically, Mr Frydenberg said that,

'The feedback that the Government has received from industry is that these temporary changes have provided certainty to business and helped them continue to operate through the coronavirus crisis. Under the social distancing measures that are currently in place, and the ongoing challenges in Victoria, it is difficult for shareholders to physically gather and for companies to execute documents in person'.

Mr Frydenberg said that the government will continue to adjust its approach as the situation develops.

The government will continue to provide the 'necessary flexibility for businesses to deal with the challenges that have been presented by the coronavirus crisis and help facilitate the recovery on the other side' he said.

[Sources: [registration required – accessed via LexisNexis Capital Monitor] Treasurer Josh Frydenberg media release 31/07/2020]

The temporary measures have been 'enormously successful' – time to make them permanent says AIRA

The Australasian Investor Relations Association (AIRA) has issued a statement welcoming the Treasurer's announcement and calling for the changes to be made permanent. AIRA CEO Ian Matheson said that the temporary measures have so far been 'enormously successful' with a 36% increase in shareholder attendance at AGMs and an uptick in meeting participation since the measures were introduced in May.

'The next step is permanent reform. The coronavirus crisis will eventually subside, but Australia's corporate legislation will remain outdated. Digital investor communications and virtual AGMs must become a permanent feature of the Corporations Act. This will not only help businesses through the current unprecedented period, but also thrive on the other side, whenever that may be' Mr Matheson said.

[Source: AIRA media release 31/07/2020]

The AICD has also welcomed the announcement as providing welcome certainty amid continuing disruption caused by COVID-19

The Australian Institute of Company Directors (AICD) has also welcomed the announcement, but called for further action.

AICD CEO Angus Armour has called on the government to extend other relief measures including temporary relief for directors from personal liability for trading while insolvent and the temporary relaxation of continuous disclosure laws (reinstatement of a fault element) until the end of the calendar year.

Commenting on the need to extend relief from personal liability for insolvent trading, Mr Armour said that the measure would 'support otherwise viable entities to continue to trade through the uncertainty of COVID-19 but it is in no way a 'free pass' for directors who must continue to assess the ongoing financial liability of their organisation, as well as the impact of incurring further debts'.

[Source: AICD media release 31/07/2020]

What's wrong with virtual meetings? Institutional investors have raised concerns with SEC over lack of member participation, and called on the regulator to tighten guidance

Writing in Harvard Law School Forum, a group of institutional investors have posted a summary of a letter written to Securities and Exchange Commission (SEC) Chair Jay Clayton in which the group provides feedback on shortcomings in the way virtual meetings were conducted this year, based on its own observations. The group states that it is 'concerned about the potential for poor precedents for conduct of shareholder meetings, and in some circumstances, deliberate actions that limited shareholder participation at various companies'.

The group also suggests steps that SEC could take to 'help improve the situation' going forward.

Concerns

Broadly, the group raised concerns that despite SEC's 7 April Guidance, virtual meetings did not enable shareholders to participate to the same extent as they would have been able to do, had the meeting been held as a physical meeting. The group states,

> 'as a generalization, the meetings as conducted were a poor substitute for in-person shareholder meetings, notwithstanding the potential for virtual technology to expand participation. In our experience, and from what we heard from a range of institutional and individual shareholders, many faced obstacles in getting into meetings, and in particular in asking questions and participating in a meaningful way. Our organizations feel

that when the pandemic risk abates, companies should return to the face-to-face format, although the optimal format may be hybrid, since virtual participation does have some benefits'.

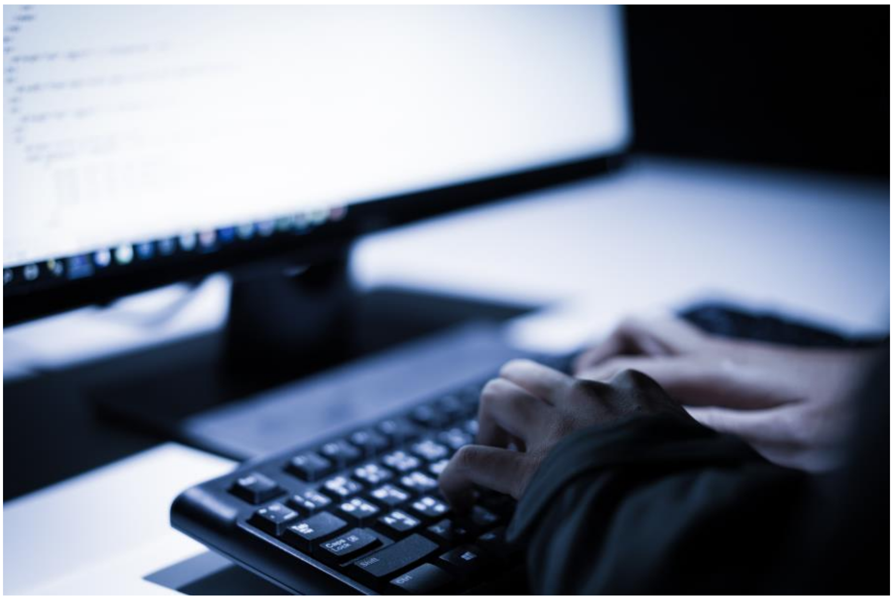
Suggested ways in which SEC could tighten guidance

Intermediaries should be required to agree on a 'standard protocol' for working together: The groups states that 'At some meetings, onerous steps were required to revoke proxy votes and obtain legal proxies. The chief problem appeared to be that control numbers were not shared between providers.'

The group has called on SEC to intervene to 'get industry participants to work out an efficient standard protocol, given competitive pressures, for example between Broadridge, which provides key utility functions, particularly for brokers and banks in dealing with beneficial ownership, and non-Broadridge transfer agents'.

The group outlines a number of instances in which shareholder participation was curtailed

- **Presentation of shareholder proposals:** The group states that it is aware of 'at least one company' where shareholder proponents were not allowed to present their proposals at the meeting. In other cases, though shareholder proponents able to present their proposal, their participation in the meeting was curtailed by failing to allow them to participate in general shareholder Q&A. In another instance, a company that did hold a physical meeting did not, despite SEC's 7 April guidance, allow a shareholder proponent to present their proposal electronically but instead required them to do so in person.
- **Shareholder questions and answers**: The group says that it is aware of a number of instances in which shareholders were unable to submit questions on a live basis, where questions that were submitted were not shared with other meeting attendees and some instances where companies made 'misrepresentations that no other questions had been asked'. The responsiveness of companies to questions received varied considerably from a 'transparent process' ensuring questions were visible, and 'attempting a good faith effort to answer them' to 'cherry picking of questions and the issuance of canned responses'.



- **Did it meet the requirements of a shareholder meeting?** In some cases, the group writes, shareholder participation was limited by such a degree (for example, where shareholders were able to view, but were not afforded the ability to vote at the meeting) that it is questionable, whether 'a particular event constituted a legal 'shareholder meeting'. The group gives the approach adopted by Berkshire Hathaway as an example of this. In this case, the company held a physical meeting which shareholders were not able to attend, though they could view it via webcast, with no facility to vote. The group argues that holding a shareholder meeting but prohibiting shareholders from participating and voting 'should not be an option, even in a pandemic, given the means available to host a valid virtual meeting'.

To address these issues the group has called on SEC to:

- 'require clear disclosure about how shareholders can participate in meetings, particularly if shareholder questions and comments are to be limited'.
- 'require or encourage all companies to conduct real-time public webcasts of their shareholder meetings' to 'make it easier for the market at large to be able to monitor company deliberations'.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 28/07/2020]

Institutional Investors and Stewardship

ISS 2021 Annual Policy Survey launched: The survey seeks feedback on the strategies investors should use to hold companies/boards accountable on a range of issues, including ESG issues

Institutional Shareholder Services has released its 2021 Annual Policy Survey to stakeholders (institutional investors, public companies, corporate directors and other interested stakeholders). The answers to the survey will be used to help inform ISS' annual benchmark policy.

The survey seeks feedback on a broad range of topics, some of which have global application and some of which are country-specific.

The table below provides a snapshot of some of the global issues on which ISS is seeking feedback.

Timeline: The deadline to submit responses is 21 August 2020.

TOPIC	QUESTIONS ON WHICH ISS SEEKS FEEDBACK
Continued relevance of ISS' 8 April COVID-19 policy guidance issued in response to the COVID-19 pandemic	ISS seeks feedback on whether, in light of continuing COVID-19 related disruption, the April guidance should: a) continue to apply in 2021; or b) whether it should be limited to companies operating in sectors hit hardest by the pandemic; or c) whether it should not apply in 2021,
AGM formats (assuming there is no need for COVID-19 restrictions to necessitate that meetings be held in electronic format)	ISS seeks feedback on what AGM format, in the absence of COVID-19, companies prefer: ie whether their preference is to hold physical meetings, hybrid meetings or virtual (online meetings) post-pandemic (ie the absence of COVID-19 restrictions).
Executive remuneration – expectations of compensation adjustments	ISS seeks views on how companies should approach executive compensation, including short term incentive plans, in the wake of the pandemic.
Climate change – accountability for taking action	ISS seeks feedback on the actions it is appropriate for shareholders to take where they consider that a company has failed to: a) adequately disclose/report on its climate change risk and/or b) address its climate change risk. For example, ISS seeks feedback on whether it is appropriate for shareholders to: ▪ vote against individual directors responsible/accountable for climate risk oversight; ▪ support shareholder proposals calling for the appointment of an independent board chair (where an independent Chair is not already in place); ▪ support shareholder proposals calling on the company to set emissions reduction targets including 'targets for reducing the carbon footprint associated with the companies products and services' (scope three emissions targets) ▪ voting against financial reports, statutory reports or CSR statements ▪ engage with the board/management on their concerns ▪ 'urge' boards to set 'climate risk goals' in executive compensation plans

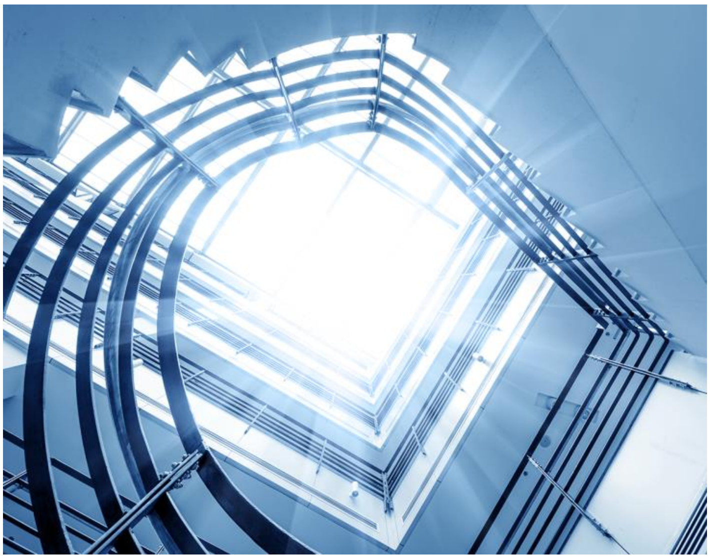
TOPIC	QUESTIONS ON WHICH ISS SEEKS FEEDBACK
Sustainability – use of the Sustainable Development Goals (SDG)	ISS seeks feedback on the extent to which organisations view the SDG framework as an effective means of measuring ESG risks and developing/implementing ESG actions/disclosure. The survey also seeks views on the effectiveness of other sustainability frameworks eg SASB, GRI and TCFD frameworks.
Auditors and audit committees – evaluating independence and performance	ISS notes that when assessing external auditor independence, ISS policies currently take into account the proportion of non-audit related services/fees provided by the auditor relative to audit related fees/services. ISS seeks feedback on what other considerations should be taken into account in the context of assessing external auditor independence. Among other things, ISS seeks feedback on whether: a) tenure; 'significant audit controversies'; c) regulatory fines/other penalties should be considered. In addition, ISS seeks feedback on whether any links between the lead independent partner with audit-related controversies at other firms should be considered. ISS also seeks feedback on the factors that should eb taken into account when evaluating the performance of audit committees.
Board diversity (racial and ethnic diversity on boards)	ISS seeks feedback on: ▪ the importance that organisations place on racial/ethnic diversity; ▪ whether boards should disclose the demographics of their board members, including directors' self-identified race/ethnicity ▪ what actions are appropriate to take to encourage increased racial/ethnic diversity. On this last point, ISS seeks feedback on whether the following actions are appropriate. ▪ engagement; ▪ supporting tying executive pay to racial/ethnic diversity goals; ▪ supporting shareholder proposals calling on companies to: a) to set diversity targets, and/or b) add new directors drawn from racial/ethnic minority groups; and/or c) requiring that lists of potential candidates for any open senior position include at least one person from a racial/ethnic minority background. ▪ voting against members of the nominating committee/other directors; and/or supporting shareholder proposals calling on boards to require at least one minority candidate to be included when recruiting for open senior positions;

[Sources: ISS media release 29/07/2020; Survey]

No need to change current settings? As You Sow is campaigning against the DOL's proposed changes to 'investment duties', separately ISS has also raised concerns

Context: The US Department of Labor has proposed amendments to the Employee Retirement Income Security Act of 1974 (ERISA) to 'confirm that ERISA requires plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action'. Comments closed on 30 July 2020.

Concerns: As You Sow is calling on organisations to write to the DOL opposing the amendments and has released a template letter to facilitate this.



As You Sow argues that the proposal is based on a misunderstanding/misinterpretation of ESG investing and that consideration of material ESG factors is consistent with fiduciaries' role/obligations.

Accordingly, As You Sow's position is that the DOL should leave existing rules unamended.

The letter states:

> 'The Proposal mischaracterizes ESG integration and fails to distinguish between ESG integration and economically targeted investing. This is likely to lead to confusion for ERISA fiduciaries and costs to plan savers. If the Proposal is finalized in its current form, we are concerned that fiduciaries will struggle to fulfil their obligations to integrate all financially material risk factors while also trying to respond to the language in the Proposal that appears to be aimed at preventing fiduciaries from taking account of these same risks.
>
> Institutional investors have a duty to act in the best, long-term interests of their beneficiaries. In this fiduciary role, we believe that ESG factors may be financially material, and integrating ESG factors is core to investment decision-making. If the Proposed Rule goes into effect, it will undermine fiduciaries' ability to act in the long-term best interest of their beneficiaries. As such, we urge you to you to allow the existing guidance to remain in effect and not move forward with a final rule'.

[Sources: As You Sow template letter]

ISS has also raised concerns about the proposed changes

Separately, Institutional Shareholder Services (ISS) has raised concerns with the DOL about the proposed amendments.

ISS states,

> 'While the Department seems to recognize the economic relevance of ESG factors in theory, the Proposing Release nonetheless perpetuates outdated assumptions about ESG investing. As a result, the proposed amendment of Rule 404a-1 imposes unnecessary burdens on the selection of ESG investments, even where the fiduciary has found such investments to be prudent after evaluating them solely on pecuniary grounds. The permissible consideration of non-pecuniary factors under the proposed amendment is confusing as well. The Department characterizes this rulemaking as a confirmation of existing sub-regulatory guidance, but that is not the case. Whereas existing guidance employs an economic equivalence test for assessing alternative investments, the proposed rule requires that such alternatives be economically "indistinguishable." In so doing, the proposal creates a new—and, ISS fears, unworkable—standard for ERISA fiduciaries'.

ISS has called on the DOL to revise the proposal to address these concerns and in particular, to 'confirm that where ESG investments present material economic considerations under generally accepted investment theories, they are to be treated pari passu with other types of investments for purposes of the ERISA duties of prudence and loyalty. We further ask that the "economically indistinguishable" concept be modified to bring it more in line with the Department's existing sub-regulatory guidance'.

ISS has also called on the DOL to schedule a public hearing on the proposed amendments and to accept additional comments following the hearing.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 04/08/2020]

Financial Services

Top Story | A board responsibility: ASIC has released updated complaints handling guidance

Key Takeouts

- Following consultation, ASIC has released updated complaints handling guidance (RG 271 Internal Dispute Resolution). Among other things, the guidance: a) adopts a new broader definition of complaints and amends the definition of small business; b) stipulates shorter maximum timeframes for responding to IDR complaints; c) outlines requirements for the content of the complaint responses; and d) provides guidance on the identification and management of systemic issues (including the role of boards and 'frontline workers' in this process).
- Certain standards and requirements in the guidance (eg the maximum timeframes for providing an IDR response) are enforceable through obligations under s912A of the Corporations Act and s47 of the National Consumer Credit Protection Act 2009). ASIC has highlighted these (boxed text) in the guidance.
- Timing: RG 271 will apply to complaints received by financial firms on or after 5 October 2021. Until that date, Regulatory Guide 165 Licensing: Internal and external dispute resolution (RG 165) continues to apply.

Following consultation, the Australian Securities and Investments Commission (ASIC) has released updated internal dispute resolution guidance for financial firms (Regulatory Guide 271 Internal Dispute Resolution (RG 271)) and registered a legislative instrument (ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98) clarifying new enforceable standards and requirements for internal dispute resolution (IDR) procedures.

The revised guidance and accompanying legislative instrument are intended to 'drive fair and timely complaint outcomes for consumers and sharpen industry's focus on systemic issues'.

ASIC has also released a report - ASIC Report 665 Response to submissions on CP 311 Internal dispute resolution: Update to RG 165- outlining the key issues raised during the consultation on proposed changes to existing guidance and its response to these issues.

An opportunity for firms?

Announcing the release of the updated gudiance, ASIC Deputy Chair Karen Chester suggested that strengtheing complaints handling processes, oversight and reporting will not only help firms to build trust, but support them in staying connected to customers' experience. Ms Chester said,

> 'Complaints handling is the first step in the dispute resolution framework and plays a critical role for firms to restore consumer trust when things have gone wrong. A financial firm's approach to complaints handling is a meaningful measure of how it treats its customers and listens to their voice…Better IDR not only benefits consumers and small business, it arms the boards of financial firms with rich and real time data on the customer experience and whether their needs are being met or not'.

Regulatory Guide 271: snapshot of some key changes

Enforceable obligations

The revised guide includes a number of standards and requirements that are enforceable as well as other guidance to assist financial firms to comply with their legal obligations. Enforceable obligations are clearly marked in the guidance.

Application of the guidance: changes to the definition of a 'complaint' and to the definition of 'small business'

Broader definition of what constitutes a complaint

The guide states that financial firms are required to deal with 'complaints' under their IDR processes. The guide adopts the definition of 'complaint' set out in AS/NZS 10002:2014.

> '[An expression] of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required'.

The guidance makes clear that firms are expected not to seek to avoid dealing with complaints that meet this broader definition by categorising them under another category of communication eg as an inquiry. In particular, the guidance states that firms should not seek to exclude complaints from the IDR process because they are: delivered verbally; or on the basis that the firm considers that the communication 'does not have merit'; or because a 'goodwill payment is made to the complainant to resolve the matter without any admission of error' [RG 271.31].

When is a response implicitly or explicitly expected?

The guide states [at RG 271.30] that:

> 'A response or resolution is "explicitly expected" if a consumer clearly requests it. It is 'implicitly expected' if the consumer raises the expression of dissatisfaction in a way that implies the consumer reasonably expects the firm to respond and/or take specific action. A consumer or small business is not required to expressly state the word 'complaint' or 'dispute', or put their complaint in writing, to trigger a financial firm's obligation to deal with a matter according to our IDR requirements'.

Examples of what constitutes a complaint – complaints made via social media are included

The guide includes a list [at RG 271.32] of expressions of dissatisfaction that 'are complaints' within the meaning of the guide. The list includes (among other examples) posts on a social media channel or account 'owned or controlled by the financial firm that is the subject of the post, where the author is both identifiable and contactable' (where the post meets the definition of complaint in the guidance).

The guide also provides two examples of communications that would fall outside the definition. ASIC states that 'the guidance is not intended to capture: employment-related complaints raised by financial firm staff ; or 'comments made about a firm where a response is not expected' eg through feedback surveys; or through 'reports intended solely to bring a matter to a financial firm's attention' notification that a firms' ATM is damaged.

Concerns raised in submissions about the expanded definition

In its response to the consultation, ASIC states that the 'most significant change to the existing definition was the inclusion of complaints "about" an organisation' and comments that a number of submissions raised concerns that the broadening of the definition in this way would 'capture public complaints, such as those in letters to the editor or complaints made during protests'.

In response, ASIC states that 'In our view, letters to the editor or complaints made during protests are unlikely to be covered by this expanded definition. In the RG 271 we note that we interpret the words "or about an organization" in the definition to cover expressions of dissatisfaction made via social media: see RG 271.28. We do not require these words to be read any more broadly than this'.

Ensuring small business are entitled to access to AFCA and to IDR: The guidance aligns the definition of small business with the AFCA definition

The guidance aligns the definition of small business with the Australian Financial Complaints Authority's definition which broadly defines a small business as a business with less than 100 employees.

The guidance states [RG 271.36-271.37] that:

> 'any IDR process for financial service providers must be able to deal, at a minimum, with complaints made by "retail clients", as defined by s761G of the Corporations Act and its related regulations.
>
> The AFCA Rules define "small business" as a business that had less than 100 employees at the time of the act or omission by the financial firm that gave rise to the complaint: see Section E.1 of the AFCA Rules. A

small business includes a primary producer, if that primary producer is also a small business. The guidance aligns the definition of small business with the Australian Financial Complaints Authority's definition which defines a small business as a 'Primary Producer or other business with less than 100 employees'.

ASIC states in its response to the consultation, that the purpose of the change is to ensure that 'all small businesses that are entitled to access AFCA are also entitled to IDR.' The proposal was, ASIC comments, broadly supported by both industry and consumer groups.

Shorter timeframes for responding to complaints

Section C of the guidance sets out the timeframes for: a) when financial firms should acknowledge a complaint; b) the maximum timeframe to provide an IDR response and the information that should be included in a response; and c) the circumstances in which a firm does not need to provide an IDR response within the maximum timeframe.

Acknowledgement of a complaint

ASIC expects firms to provide acknowledgement of a complaint (verbally or in writing (email, post or social media channels) within 24 hours (or one business day) of receiving it, or as soon as practicable. This is not an enforceable requirement.

Maximum timeframes for providing an IDR response

The guidance (at RG 271.56-271.60) specifies different maximum timeframes for firms to provide a response to a complaint according to the type and complexity of the complaint. Table 2 at page 21 of the guidance summarises the timeframes for responding to various forms of complaint. These are enforceable requirements.

Broadly speaking, the timeframe for providing a response to superannuation-related complaints (excluding complaints about death benefit distributions) has been shortened from 90 calendar days to 45 calendar days. The deadline for providing a response to complaints about death benefit distributions remains unchanged at 90 days.

ASIC comments that the reduction in the time to respond to complaints was generally supported in submissions to the consultation.

The timeframe for providing a response to (almost all) other complaints has been shortened from 45 calendar days to 30 calendar days.

ASIC comments that submissions from industry generally opposed this change, while submissions from consumer groups universally supported it. ASIC explains that it considers that a 45 day timeframe is no longer acceptable for a number of reasons including that based on ASIC's observations from IDR on-site visits, the 'vast majority of total complaints were resolved in less than 30 calendar days'.

Customer advocate - the total time to respond to the complaint includes both the IDR process and the customer advocate review

The guide makes clear that the maximum timeframes for providing a response apply to all IDR processes including internal appeals, escalation mechanisms and any customer advocate review.

The guidance states that 'If a complainant chooses to escalate their complaint to the customer advocate, the total time spent dealing with the complaint must not exceed the relevant maximum IDR timeframe set out at Table 2. The total time includes both the IDR process and the customer advocate review'.

ASIC's response to the consultation explains that this clarification was included because ASIC considers 'that the underlying intention of the dispute resolution framework is that an unresolved complaint will make a timely transition from IDR to AFCA. We are concerned that the customer advocate model will undermine this intention by creating a delay between the two steps'.

Having said this, ASIC does not suggest that the customer advocate has no role to play. ASIC's response acknowledges the 'significant investments in their customer advocate function' that the banking sector has made, and calls on firms to retain but refocus these resources on: a) increasing the underlying performance/quality of IDR systems; b) improving the identification/handling of systemic issues; c) supporting vulnerable customers; d) 'assisting in consumer centric culture change within their firms'. ASIC adds that it 'strong support[s] the establishment of effective feedback loops between customer advocates and the relevant business units. To be effective, customer advocates need the right degree organisational support and appropriate reporting lines'.

Exceptions: circumstances where a firm need not provide a response within the maximum timeframe

The guidance specifies the circumstances in which firms are not required to provide a response within the maximum IDR timeframe and outlines requirements for notifying complainants of the delay (IDR delay notification requirements) where this is the case. These are enforceable requirements.

Broadly speaking, financial firms may take longer than 30 calendar days (and 45 calendar days for superannuation complaints) to respond where there is 'no reasonable opportunity for the financial firm to provide the IDR response within the relevant maximum IDR timeframe' because: a) the resolution of the individual complaint is particularly complex; and/or b) circumstances beyond the financial firm's control are causing complaint management delays.

In its response to the consultation, ASIC states that it considers that these 'categories provide an appropriate safeguard for when financial firms reasonably need more time to resolve a consumer complaint'.

The response to submissions document makes clear that ASIC does not accept that complaints related to a particular kind of product/serve should always be considered complex. 'Even the most complex products or services will give rise to some complaints that are simple; financial firms should respond to these complaints as quickly as possible and certainly within IDR time frames' ASIC states.

Complaints resolved within five days of receipt

Where a complaint is resolved within five days, firms are not required to provide an IDR response provided that the firm has: a) resolved the complaint to the complainant's satisfaction; or b) provided an explanation and/or apology 'when the firm can take no further action to reasonably address the complaint ' [RG 271.71].

Managing systemic issues: requirements for boards, executives, frontline staff

The guide includes enforceable requirements [RG 271.118 - 271.120] around how systemic issues should be managed and makes clear that setting the accountabilities for complaints handling and the management of 'systemic issues' is a board responsibility.

The guide states that:

- 'Boards must set clear accountabilities for complaints handling functions, including the management of systemic issues identified through consumer complaints'.
- Reports to the board/executive committees 'must include metrics and analysis of consumer complaints including about systemic issues identified through those complaints'.
- Firms are also required to: 'encourage and enable staff to escalate possible systemic issues they identify from individual complaints; regularly analyse complaint data sets to identify systemic issues; promptly escalate possible systemic issues to appropriate areas within the firm for investigation and action; and report internally on the outcome of investigations, including actions taken, in a timely manner'.

In its response to the consultation, ASIC comments that the requirements for boards to set accountabilities and the inclusion of metrics in board reports, was broadly supported in submissions to the consultation.

ASIC further comments that the changes are justified on the basis that there is a need for firms to strengthen oversight/management of non-financial risk. ASIC notes that the Hayne Commission highlighted 'significant shortcomings in the corporate governance practices of many large financial services firms including in relation to the oversight and management of non-financial risk'. This was also confirmed by the findings in ASIC Report 631 Director and officer oversight of non-financial risk (REP 631) which found that oversight and management of non-financial risks 'has generally not received sufficient attention until recent times—in stark contrast to the focus on financial risk and financial returns'.

Some concerns raised about the role of frontline staff

In its response to the consultation, ASIC comments that a number of submissions 'did not agree with the requirement for frontline staff to have a role in identifying systemic issues'.

However, ASIC's view is that 'frontline staff and staff in specialist IDR teams provide a valuable source of information on systemic issues that should not be ignored. The ability of all staff dealing with complaints to at least 'flag' potential systemic issues allows for the matter to be subject to further analysis within the firm'.

Accessibility – dealing with an 'authorised representative'

The guidance states that 'firms should train staff to proactively identify, support and assist people who need help to make a complaint' and that in the interests of optimising accessibility, 'firms should allow representatives to lodge complaints on behalf of complainants'.

The guide states that once notified that an authorised representative has been appointed, firms shouldn't contact the complainant directly except where:

'a) the complainant specifically requests direct communication with the firm;
b) the firm reasonably believes that the representative is acting against the complainant's best interests;
c) the firm reasonably believes that the representative is acting in a deceptive or misleading manner with the complainant and/or the firm;
d) the firm reasonably believes that the representative is not authorised to represent the complainant; or
e) at the time the firm is dealing with the complaint, the representative has been excluded by AFCA from representing complainants in relation to any complaint lodged with AFCA'.

Timing

The guidance in RG 271 guide will apply to complaints received by financial firms on or after 5 October 2021 to enable sufficient time for firms to 'undertake internal capacity building, establish clear lines of reporting and accountability, develop processes and systems, and upskill staff who are responsible for dealing with complaints'.

Until that date, Regulatory Guide 165 Licensing: Internal and external dispute resolution (RG 165) continues to apply.

[Source: ASIC media release ASIC Report 665 Response to submissions on CP 311 Internal dispute resolution: Update to RG 165; Regulatory Guide 271 Internal Dispute Resolution; ASIC Corporations, Credit and Superannuation (Internal Dispute Resolution) Instrument 2020/98]

AFCA has welcomed the release of the guidance

In a statement, AFCA CEO and Chief Ombudsman David Locke said that 'AFCA strongly supports measures such as the Regulatory Guide 271 to ensure Internal Dispute Resolution (IDR) is made as fair, accessible and timely as possible. AFCA firmly believes that IDR plays a crucial role in the framework to resolve complaints about financial services. We welcome ASIC's updated standards and requirements.'

Mr Locke added that effective IDR processes provide an opportunity for firms to resolve complaints before they are lodged with AFCA.

'IDR is the key to early resolution, which benefits consumers, financial firms and the financial sector broadly. In our view, IDR should focus on helping financial firms to improve internal practices to avoid and resolve disputes. The updated guide will not only improve the quality of internal complaint resolution but will enable financial firms to deliver better outcomes for consumers and reduce the need to escalate complaints to external dispute resolution' he said.

[Sources: AFCA media release 31/07/2020]

Is offshoring a victim of COVID-19?

The COVID-19 pandemic has forced Australian Authorised Deposit Taking Institutions (ADIs) to operate with limited offshore business support. Will this stimulate onshoring post COVID-19? Or will it be business as usual, post-pandemic?

MinterEllison has released an article exploring the potential impacts of the coronavirus on offshoring and overseas outsourcing, informed by discussions with ADIs and outsourcing service providers. The article outlines three potential scenarios.

You can access the full text on the MinterEllison website here

COVID-19: Business interruption test case: Do policies exclude COVID-19?

The Insurance Council of Australia (ICA) and the Australian Financial Complaints Authority (AFCA) have announced that they will file a test case to clarify the application of infectious diseases cover in business interruption policies.

According to the joint statement, the primary purpose of the case is get clarification on 'whether references to a quarantinable disease under the Quarantine Act 1908 should be construed as a reference to a listed human disease under the Biosecurity Act 2015 in various policies issued to small businesses containing business interruption cover'.

Announcing the decision, ICA CEO Rob Whelan commented that though insures believe disease exclusions are clear, the clarification provided by the Court would provide customers and AFCA with 'greater legal certainty' on the issue.

> 'The Insurance Council of Australia has prepared this test case on behalf of the general insurance industry. A decision from a superior court will assist insurers, AFCA and customers in developing a better understanding of how exclusions in policy documents respond to the unique circumstances of the COVID-19 pandemic. Insurers believe the intention of pandemic and communicable human disease exclusions are clear. However, a judicial determination will provide insureds and AFCA with greater legal certainty on this issue' Mr Whelan said.

AFCA Lead Ombudsman, Insurance John Price commented that the decision would assist AFCA in determining the outcome of relevant complaints and welcomed the ICA's engagement on the issue.

> 'Following discussion with the Insurance industry, ASIC, APRA and Treasury, AFCA has agreed that a test case before a superior court should proceed to allow for a determination of this threshold issue. Resolution of this threshold issue is important to assist AFCA in its dispute resolution role. I am pleased the Insurance Council of Australia and its members have engaged with AFCA in identifying claims that will form the combined test case. I am also appreciative of the complainants for agreeing to have their cases heard in this manner. The outcome of the case will provide some clarity for all stakeholders in particular small business and insurers.'

The statement says that the CIA will seek leave to have the test case heard as an expedited matter. The legal costs of the test case will be funded by the ICA.

[Source: AFCA media release 31/07/2020]

Related News: FCA Business Interruption Test Case

Uncertainty over coverage is also an issue in the UK.

The Financial Conduct Authority has brought a test case 'seeking legal clarity on business interruption (BI) insurance during the coronavirus (Covid-19) crisis'.

The case is currently before the court and the FCA is publishing regular updates on its website here. The FCA has expressed the hope that the judgement will be handed down in September.

[Source: FCA Business Interruption Test Case]

COVID-19: Customer satisfaction levels with banks on the rise?

JP Morgan has released some key results of its latest report into customer satisfaction levels with lenders operating in Australia. The report identified that:

- **Customer satisfaction levels with lenders overall has increased on last year** (and has increased during the pandemic). In May 2020, customer satisfaction was at 79.5%, an increase of 0.2% on April this year and a 1.1% increase on May 2019.
- **Mutual banks had the highest customer satisfaction levels:** As at May 2020, customer satisfaction levels at mutual banks was higher than at other lenders at 89.2% (up from 88.5% last year)
- **Foreign banks operating in Australia:** Customer satisfaction levels at foreign banks operating in Australia was also high at 85.5% (down from 85.8% last year).
- **Big Four Banks:** Satisfaction levels at the big four banks was 77.2% in May 2020. This represents the greatest uptick in satisfaction levels across the three categories at 1.4%.

Commenting on the findings, Roy Morgan CEO Michele Levine attributed the overall uptick in customer satisfaction to the banks' response to the current crisis.

> 'The quick reaction of Australia's financial institutions to extend support for their customers during this period has been a big help for many who have been put into financial hardship through no fault of their own…The suite of measures offered by banks depending on the financial situation of their customers is providing significant support to customers as well as the economy more broadly'.

Separately, research firm Glow's quarterly Australian Banking Brand and Trust Index identified that trust in Australia's lenders has increased with trust in the big four lenders in particular showing a marked increase. Glow's Head of Insights, Eddie Kowalski commented along similar lines to Ms Levine that the pandemic has had a positive impact on the way in which banks are perceived.

> 'COVID-19 and the resulting mortgage freeze, recently extended to January 2021, presented the big banks with an opportunity to redeem themselves in the eyes of the Australian public following the Royal Commission last year. And so far, their efforts seem to be working'. Mr Kowalski went on to comment that it remains to be seen whether the increased levels of trust will persist after September/when support tails off. It is only after people are 'required to pay up once again, whether in the form of increased mortgage repayments or through losses to their superannuation, that this built-up trust in banks will be tested' he said.

In a statement, The Customer Owned Banking Association (COBA) welcomed the results of both the Roy Morgan research and separately the Glow research. COBA CEO Michael Lawrence, said the results underline the commitment of the banking sector, and more particularly of COBA member banks, to support their cusomters during the COVID-19 pandemic.

> 'From the outset of COVID-19, our members have been on the front foot of customer care. They have proactively contacted customers at risk of vulnerability, responded to requests for assistance with respect and sensitivity, and have pivoted operations to remote work arrangements and digital capability where required, ensuring customers are never on their own. Rather than pay out shareholders, customer owned banking institutions reinvest profits back into benefits for customers through lower interest rates, lower fees and innovative technology' he said.
>
> [Sources: Roy Morgan media release 21/07/2020; Glow media release 29/07/2020; COBA media release 28/07/2020; [registration required] Australian Banking Brand and Trust Index]

COVID-19: So far funds have paid out $29.4bn under the government's early release of superannuation scheme

The Australian Prudential Regulation Authority (APRA) has released industry-level and fund-level data on the early release of superannuation scheme for applications received during the period 20 April (inception of the scheme) to 26 July 2020.

- Total payments made since the inception of the scheme have taken an average of 3.3 business days to process, with 95.8% of payments made within five business days.
- Over the week to 26 July, superannuation funds received 140,000 applications. Of these, the majority (81,000) were repeat applications bringing the total number of repeat applications received to date to 1 million.
- 59,000 were initial applications bringing the total number of initial applications to 2.9 million since inception of the scheme.

- Over the week to 26 July, superannuation funds made payments to 173,000 members worth $1.4 billion.
- Funds have made approximately 3.8 million since inception payments since the inception of the scheme worth a total of $29.4bn. This figure represents 96% of applications received since inception of the scheme.

[Source: APRA media release 03/08/2020]

COVID-19: Withdrawals under the early release of superannuation scheme revised upwards to $42bn, the AIST says the high take up rate is a sign that more support needed and has called on the government to consider introducing additional income support measures

Treasury has informed the Senate Select Committee Inquiry into COVID-19 that the revised estimate for the amount that will be withdrawn from the superannuation system under the government's early release of superannuation scheme, has been revised upwards from $27 billion to $42 billion.

One reason that the estimate has increased is the 're-costed numbers based on the lived experience of the first three months' of the scheme as well as the extension of the scheme to the end of December. When asked, Treasury said that it has not factored in a 'spike' in applications at the end of September.

> 'We are assuming that, obviously, the unfolding situation in Victoria will have an effect. We obviously have factored in the extension from September to December; that has an effect. But the biggest effect is our re-costed numbers based on the lived experience of the first three months' the Committee heard.

Asked whether Treasury had undertaken any modelling on what impact the withdrawal of funds from the savings pool would have on those members who are not accessing their savings early, Treasury indicated that no modelling had been done but that 'depending on the particular funds and investment choices, there may be some flow-on impacts, but I would have thought they would be very minor'.

An indicator that more financial support is needed?

The AIST has raised concerns that the high withdrawal rate is an indicator that many people, financially impacted by COVID-19, are unable to access government income support.

AIST CEO Eva Scheerlink raised concerns about the long term consequences for low income workers and women in particular, of withdrawing retirement savings early.

Ms Scheerlinck called on the government to consider introducing additional income support measures to provide these workers with an alternative to accessing their superannuation. Ms Scheerlinck also said that the legislated increase in the superannuation guarantee to 12% will be 'critical' in boosting the savings of those who have made early withdrawals under the scheme.

Call for the government to 'rule out' a third round of withdrawals

The ACTU has also raised concerns about the high rate of withdrawal and the impact it will have on workers' retirement and has called on the government to 'rule out a third round of withdrawals'.

[Source: Senate Committee on COVID-19: Australian Government's response to the COVID-19 pandemic Transcript of public hearing 30/07/2020; AIST media release 30/07/2020; ACTU media release 30/07/2020]

In Brief | ASIC is conducting a second round of consultation on a proposed product intervention order to address significant consumer detriment caused through the sale of add-on motor vehicle insurance. The revised proposal incorporates feedback on the initial proposal. The deadline for submissions is 19 August

[Source: ASIC media release 05/08/2020]

Accounting and Audit

FRC Annual Enforcement Review July 2020: The regulator has flagged failure to obtain sufficient appropriate audit evidence and failure to exercise professional scepticism as recurring issues

Key Takeouts

- The UK Financial Reporting Council (FRC) has released its second Annual Enforcement Review.
- The review identified that despite ongoing focus through Audit Quality Review inspections over a number of years, deficiencies in two key areas remain a concern. Namely: 1) failure to obtain sufficient appropriate audit evidence; and 2) failure to exercise professional scepticism.
- The report attributes these ongoing issues to six factors: 1) insufficient involvement of the audit partner and over-delegation to junior members of the team; 2) disorganised approach to audit work; 3) 'siloed' approach to audit which leads to a 'failure to step back and take an overall look at the financial picture'; 4) lack of independence (auditor/management relationships that are 'too close to enable auditors to exercise sufficient professional scepticism'; 5) failure to involve/sufficiently involve the audit quality assurance partner; and 6) issues arising from the use of experts/specialists (eg lack of communication with the expert or specialist teams and a 'tendency to accept their work unquestioningly').
- Increased use of 'constructive engagement' to resolve less serious issues: Over the past twelve months, 88 cases were opened by the Case Examination team (a 90% uptick on last year). Of these cases, 35% were able to resolved through 'constructive engagement'.
- The report also flags areas of heightened risk and the FRC's expectations of auditors in light of the COVID-19 pandemic
- The report flags that there will be a consultation on possible amendments to the FRC's audit enforcement procedure, following a twelve month review, in 'autumn' of 2020.

Report snapshot

The UK Financial Reporting Council has released its second Annual Enforcement Review.

Some key statistics

- **More cases were opened:** During the last year, 88 cases were opened, a 91.3% increase on the previous year.
- **More issues were reported:** The FRC received almost double the number of complaints and whistleblowing disclosures compared to the previous year.
- **More cases were closed:** 83 cases were closed in the year, an increase of 30% on the previous year. At 31 March 2020, 28 cases remained open, compared to 23 at 31 March 2019.
- **Financial sanctions:** The FRC has published outcomes of nine investigations which have resulted in £16.5 million in sanctions (before settlement discount) in the past twelve months.
- **The FRC's enforcement division has expanded 14%.** Commenting on this in her foreword to the report, Executive Counsel and Executive Director of Enforcement Elizabeth Barrett said that the 'increase in resourcing of the division is beginning to deliver an improvement in the timeliness of concluding investigations' but that the FRC remains focused on 'improving the speed of our investigations and enforcement action'.

Recurring issues and underlying causes

The review identified that despite ongoing focus through Audit Quality Review inspections over a number of years, deficiencies in two key areas remain a concern. Namely: 1) failure to obtain sufficient appropriate audit evidence; and 2) failure to exercise professional scepticism.

The report attributes these ongoing issues to six factors.

1. **Lack of adequate supervision coupled with over-delegation to junior member of the audit team.** The report identifies 'insufficient involvement of the audit partner and over-delegation to junior members of the team' as a key contributor to a range of issues including among others, 'failure to identify the most basic indicators of potential fraud'.

   The report observes that there were a number of instances where 'junior members of the team (including for example, newly qualified, partly qualified and even unqualified staff) have carried out work which is not checked or properly supervised by senior members of the team, or partners, who are too "hands-off"'.

2. **A disorganised approach to audit work:** The report observes that analysis of email traffic between the audit team as well as audit documentation reveals that audit work has in some instanced lacked organisation. This has resulted in lines of inquiry not being followed up and to 'parts of the financial statements being signed off without the testing being done properly'.

3. **A 'siloed' approach to audit** where different teams conduct different aspects of the audit. This can lead to missing 'red flags' that are only apparent when the audit is looked as a whole.

4. **Lack of independence**, that is, situations in which the relationship between the auditor and management is 'too close to enable auditors to exercise sufficient professional scepticism'. For example, the report highlights that in 'a number of cases, audit team members refer to 'we', 'us' and 'our company' when referring to the company they are auditing, indicating that they feel a part of the audited entity rather than seeing it as a separate entity over which their role is to exercise independent oversight'. In addition, the report flags that in some cases 'audit partners were more concerned with maintaining what was viewed as a 'client' relationship and making sure that the key individual at the "client" viewed the firm favourably, than ensuring the quality of the independent audit work'.

5. **A failure to involve/sufficiently involve the audit quality assurance partner.**

6. **Issues arising from the use of experts/specialists.** For example, a lack of communication with the expert or specialist teams and a 'tendency to accept their work unquestioningly'.

Focus on driving audit quality: Cases resolved through constructive engagement

Constructive engagement is explained in the report as an alternative to formal enforcement action ie 'a process introduced by the AEP for resolving cases with an audit firm where the audit quality concerns do not necessarily warrant a full enforcement investigation'. The FRC also describes it as a 'basis for taking swift and targeted remedial action in less serious cases so that the causes of failures are addressed and the risks of repetition minimised'.

Constructive engagement entails a case examiner seeking information/explanations from an audit firm about the audit work conducted to identify the root causes of a potential audit breach and agreeing appropriate remedial actions with the firm as appropriate. The report observes that the remedial actions agreed as a result of the constructive engagement process are often similar to non-financial sanctions imposed through formal enforcement channels eg modifications to audit procedures and/or additional staff training. Where an inquiry cannot be resolved to the case examiner's satisfaction, it may be referred to the conduct committee for decision on opening an investigation.

Examples where constructive engagement may be used include: cases where there has been 'a minor, technical breach, usually at the very lowest end of the spectrum'; and 'cases where there is no real concern about harm to investor, market or public confidence in Statutory Audit process and where there is no evidence of financial detriment to anyone'.

Announcing the release of the report, FRC Executive Counsel and Executive Director of Enforcement Elizabeth Barrett, said that it illustrates the effectiveness of 'constructive engagement' in providing 'a timely and proportionate way of addressing deficiencies and the wider deployment of non-financial sanctions to drive audit quality'.

Statistics on the increased use of constructive engagement to resolve issues

- 33 cases were dealt with through Constructive Engagement, an increase of 73.7% on the previous year.
- 24 of these cases involved engaging with the 'Big Four' accounting firms, and 30 of the 33 involved the 'big six'.

- In 31 cases, an issue/error was identified. In the remaining two cases, 'there was no apparent underlying financial statement error'.
- The most common 'root cause' of the issues identified in the 31 cases in which an issue/error was identified were: a) failure to identify a material error in the primary financial statements due to insufficient audit testing; b) failure to challenge/document the challenge to management's accounting treatment; and c) insufficient knowledge within the audit team.
- The average time taken to conclude the Constructive Engagement cases was under eight months.

COVID-19: Areas of heightened risk and the FRC's expectations of auditors

The report acknowledges the disruption caused by the COVID-19 pandemic and states that the regulator will 'continue to support the professionals we regulate by providing guidance on how to fulfil their professional responsibilities'.

Having said this, the report also makes clear that 'whilst the context in which increasingly difficult judgements are made will be understood, there cannot be individual exceptions made to the standards against which Enforcement will hold accountants, auditors and actuaries to account'.

The report identifies a number of areas in which it considers the risk to be 'heightened' as a result of the pandemic and briefly flags the FRC's expectations of the way in which accountants and auditors should respond.

These include (among others):

- Ensuring that 'sufficient and appropriate audit evidence' is obtained and retained. 'The auditor should also ensure that the rationale for significant audit judgements is appropriately recorded – whilst always necessary, this is of heightened importance given the increased complexity of the judgements likely to be required in these unprecedented times' the report states.
- Going concern: In light of the fact that the 'accounting and auditing standards on going concern have not changed since the onset of Covid-19', the FRC expects accountants to comply with accounting standards when determining whether it is appropriate to prepare accounts on a going concern basis. Auditors are expected to 'challenge management appropriately on their judgements, and ensure they have sufficient and appropriate evidence to support their own judgements'.
- Professional scepticism: 'Auditors must maintain their independence and objectivity, recognising that it is not the auditor's role to assist the company in presenting an overly optimistic or pessimistic picture, but to assure the truth and fairness of the financial statements' the report states. The FRC goes on to say that it 'will always look for evidence of appropriate challenge of management and a clear explanation of decisions reached by the auditor'.
- Fraud: The pandemic heightens the risk of fraud for a number of reasons, the report states. In consequence accounts need to 'maintain the highest ethical standards in the face of any undue pressure' and 'the auditor should eb alert to red flags and consider the need for additional procedures to address the risks of fraud'.
- Modifications to audit opinions: The report encourages auditors to review the guidance from the FRC on the modification of audit opinions (FRC Guidance on modifications of Independent Auditor's Opinions and Reports) in light of the uncertainty in the current circumstances. Though historically, audit opinions have rarely been modified in the UK, the report comments, 'the FRC is increasingly challenging audit firms in this area'.

Regulatory reform?

Commenting briefly on the status of the government's regulatory reform agenda, the report states that the timing is as yet uncertain. 'Covid-19 has impacted the Government's timetable for consultation and implementation of these reviews and we are awaiting the Government's update on the timing for its programme' the report states.

Review of Audit Enforcement Procedure – consultation on possible changes due in 'autumn 2020'

The report flags that the review of the FRC's audit enforcement procedure (AEP) which has been taking place over the past twelve months will consult on possible amendments to AEP in 'autumn' of 2020.

[Sources: FRC media release 31/07/2020; FRC Annual Enforcement Review July 2020]

Risk Management

Consultation on proposed reforms to the foreign investment review framework

The government has released a raft of draft legislation for consultation to implement reforms to Australia's foreign investment framework announced on 5 June 2020. The explanatory memorandum states that the suite of proposed reforms will 'improve and update the operation of the law across national security, compliance monitoring and enforcement, and integrity as well as streamlining requirements and making technical changes to improve the operation of the law. They strike the right balance between facilitating and attracting foreign investment while protecting the national interest'.

The reforms will be implemented in two phases and the government has released an implementation roadmap outlining the plan for consulting on each phase. The closing date for submissions on phase one of the reforms is 31 August 2020.

Announcing the consultation, Treasurer Josh Frydenberg said that it 'is the next step in modernising Australia's foreign investment regime to keep pace with emerging risks and global developments while allowing it to remain welcoming to foreign investments. The reforms are consistent with similar changes made by our international trade and investment partners'.

Some Key Points: Phase one of the proposed changes – submissions due 31 August

New national security test

It's proposed that a new national security test will be introduced 'to ensure the Treasurer has the visibility and ability to screen cases related to national security'. Broadly, the proposed new test would:

- require 'mandatory notification of' any proposed direct investment in a sensitive 'national security business' (including starting such a business) and/or any proposed investment in sensitive 'national security land'
- allow a 'significant action that has not been notified and certain actions not already captured under the FATA [Foreign Acquisitions and Takeovers Act 1975] to be "called in" for screening on national security grounds';
- allow investors to voluntarily notify to receive investor certainty from "call in" for a particular investment; and
- allow the Treasurer (in exceptional circumstances) to 'impose conditions, vary existing conditions, or, as a last resort, force the divestment of any realised investment which was subject to the FATA where national security concerns are identified'.

Increased visibility: proposed introduction of a register of foreign ownership

It's proposed that a new register of foreign ownership of Australian assets be established to increase the government's visibility over foreign investments made in Australia. The explanatory memorandum states that 'consistent with the existing practices for similar registers, the information on the register will not be publicly available and will not be able to be inspected'.

The explanatory memorandum states that the register will use the same framework as the Commonwealth Registers Act 2020 ie the new register would merge and expand the existing land, water, residential and agricultural registers. This is intended to 'streamline and simplify the process of registration for both investors and the Registrar'.

Stronger penalties, more flexible enforcement options and enhanced monitoring/investigation powers

It's proposed that a range of stronger penalties and stronger compliance and enforcement powers be introduced to deter non-compliance. These include (among others):

- the expansion of the infringement notices regime to cover all types of foreign investments and the introduction of a 'third tier' of the regime which will apply to 'high value acquisitions'
- increased civil and criminal penalties under the Foreign Acquisitions and Takeovers Act 1975 (FATA) 'to ensure they act as an effective deterrent'.

- providing the Treasurer with new powers to:
  - give directions to investors in order to prevent or address suspected breaches of conditions or of the foreign investment laws;
  - monitor investor compliance and/or investigate potential non-compliance by providing the Treasurer with the 'standard monitoring and investigative powers' in line with those of other business regulators'
  - accept enforceable undertakings from foreign persons to manage compliance.

Measures to strengthen the 'integrity of the foreign investment review framework'

The draft Foreign Investment Reform (Protecting Australia's National Security) Bill 2020: Integrity amendments and the draft Foreign Investment Reform (Protecting Australia's National Security) Bill 2020: Technical amendments propose to introduce a number of measures aimed at 'closing gaps in the legislation (including screening gaps), making foreign investor obligations clearer, and ensuring that the foreign investment framework continues to be fit for purpose'.

Proposed changes include (among others)

- providing that 'some actions are 'significant actions' without requiring the change in control test to be met where the foreign person already controls the entity or business';
- ensuring that 'increases in actual or proportional shareholdings, including through share buybacks and selective capital reductions, are notifiable actions and/or significant actions';
- bringing 'within the screening framework the acquisition of property where the Australian resident is buying a property for a foreign parent or spouse in an attempt to circumvent the FATA';
- ensuring that the sale of State and Territory business functions meets the definition of Australian business;
- expanding the tracing provisions to unincorporated limited partnerships.

Information sharing

It's also proposed that the FATA be amended to 'allow for information sharing with foreign governments, expand the purposes for which information can be shared within the Commonwealth, and allow for the ATO to disclose protected information to specific persons appointed by the Commonwealth for the purposes of the FATA'.

'A timely, consistent and reliable investor experience'

It's proposed to give the Treasurer the power to extend or further extend 'the decision period' – ie where the Treasurer has been notified of a proposed action the Treasurer currently has 30 days to make a decision about the action - by up to 90 days.

The implementation roadmap comments in relation to this measure that 'the Government is committed to delivering a timely and efficient foreign investment regime which recognises commercial deadlines and does not unnecessarily impede the operation of foreign investors or markets. The Government will continue to work with stakeholders in identifying ways to streamline and enhance the investor experience'.

New foreign investment fees framework

Consistent with ensuring that 'foreign investors, not Australian taxpayers, bear the costs of administering the foreign investment system' the proposed new fee framework is intended to 'be fairer and simpler, and will reduce the administrative burden of determining the fee that is payable'.

[Sources: Treasurer Josh Frydenberg media release 31/07/2020; Exposure draft materials; Implementation roadmap]

COVID-19: Data breaches attributable to human error up 7% compared to six months ago, but no clear evidence that it's linked to altered working conditions says OAIC

The Office of the Australian Information Commissioner (OAIC) has published its latest twice yearly report on notifications received under the notifiable data breach scheme. The report tracks the key causes and sources of data breaches.

Breach numbers

- 518 breaches were reported in the six months to June 2020, up from 447 notifications in the same period in 2019, but down from 532 to July to December 2019.
- The report comments that the 518 breaches reported in this period is still significantly higher than the 447 breach notifications received for the January to June period 2019.

Top three causes of breaches

1. Malicious/criminal attacks:

- 61% of breaches (218 notifications) were caused by malicious/criminal attacks (eg through phishing, malware, ransomware, brute-force attack and compromised or stolen credentials) which continue to be the primary cause of notifications.
- The report highlights that the number of breaches caused by social engineering/impersonation has increased by 47% compared to last period
- OAIC comments that 'many cyber incidents in this reporting period appear to have exploited vulnerabilities involving a human factor, such as clicking on a phishing email or disclosing passwords'.

2. Human error:

- 34% of breaches are the result of human error (an uptick of 7% on the last period).
- No link to changed work conditions? Commenting on the uptick in the number of breaches caused by human error the report states that the cause has not been determined. 'The OAIC has not identified a specific cause for the increase. The OAIC is also not aware of any evidence to suggest the increase is related to changed business practices resulting from COVID-19, given that notifications across the period are otherwise broadly consistent with longer term trends'.
- Organisations need to up their focus on preventing these breaches from occurring: OAIC Commissioner Angelene Falk commented that 'While no specific cause for this change has been identified, it reinforces the need for organisations and agencies to take reasonable steps to prevent human error breaches, including training for staff who handle personal information. Organisations must also continue to assess and address any privacy impacts of changed business practices, both during their response to the COVID-19 outbreak and through the recovery.'

3, System error: 5% of breaches are due to system error (down 5% on the previous period).

Increased risk of ransomware attack

The number of breaches attributed to ransomware attacks during the period January to June 2020 increased to 33 (up from 13 in the previous six months), a 150% increase.

Commenting on this, Commissioner Falk said that 'we are now regularly seeing ransomware attacks that export or exfiltrate data from a network before encrypting the data on the target network, which is also of concern. This trend has significant implications for how organisations respond to suspected data breaches — particularly when systems may be inaccessible due to these attacks. It highlights the need for organisations to have a clear understanding of how and where personal information is stored on their network, and to consider additional measures such as network segmentation, robust access controls and encryption.'

Scale of breaches

- Consistent with the previous reporting period, most data breaches (64%) affected less than 100 individuals
- Breaches affecting between 1 and 10 individuals comprised 46% of notifications
- In less than 1% of cases, is the extent to which individuals are affected unknown.

Breaches by sector

Top five reporting sectors: The health sector is again the highest reporting sector, notifying almost a quarter (22% or 115) of all breaches, followed by the finance sector notifying 13% of all breaches (75) and the education sector notifying 8.4% (44 breaches). The insurance sector notified 6.7% (35) and the legal, accounting and management services sector reported 5% (26).

Kinds of personal information involved

- Contact information eg an individual's home address, phone number or email address continues to be the most common type of personal information involved in a data breach (84% of cases).
- Data breaches notified in this period also involved tax file numbers (17%), financial details eg bank account/credit card numbers (37%) and health information (26%).

Time taken to report breaches

- 77% of notifying entities were able to identify a breach within 30 days of it occurring
- 12% of notifying entities took longer than 60 days to complete their assessment and notify OAIC of the breach
- 5% of entities took longer than 121 days to notify OAIC.
- Commissioner Falk commented that it is important that organisations have the capability to detect, respond to and report data breaches, 'Organisations must be able to detect and respond rapidly to data breaches to contain, assess and notify about the potential for serious harm' Commissioner Falk said. In addition Commissioner Falk said that a number of notifications 'fell short of the standards required, in failing to identify all the types of personal information involved and not providing advice to people affected on how to reduce their risk of harm'. Commissioner Falk reminded entities that OAIC will require organisations to reissue the notification in these instances.

[Sources: OAIC media release 31/07/2020; Notifiable Data Breaches Report for January-June 2020]

'Data governance must be driven from the top': The Governance Institute has partnered with Data61 to product a report on the top data governance risks facing Australian organisations and Australian boards. Key risks identified include: risks to brand and reputation from mishandling data; a disconnect between IT leaders and business executives; and difficulty in putting a value on data

[Sources: Governance Institute of Australia media release 05/08/2020; Full text of the report: Digital Trust Report August 2020]

Restructuring and Insolvency

Australian Financial Security Authority data shows annual bankruptcies are at a 30 year low, debt agreements are at a ten year low and personal insolvencies at a 24 year low

The Australia Financial Security Authority has released personal insolvency statistics – bankruptcies, debt agreements and personal insolvency agreements - for 2019-20 and the June quarter 2020.

- Bankruptcies: In 2019–20, bankruptcies fell 18.8% on last year, to their lowest annual level since 1989–90.
- Debt agreements: There were 8,147 debt agreements in 2019–20. This is a decrease of 29.5% on last year and the lowest annual level since 2010.
- Personal insolvencies: The total number of personal insolvencies in 2019-20 fell 23.3% on last year to 20,762. This is the lowest annual level since 1995–96.

June quarter 2020 vs June quarter 2019

- Personal insolvencies: The number of new personal insolvencies for the June quarter 2020 was 35.1% down on the June quarter 2019
- Bankruptcies: The number of bankruptcies for the June quarter 2020 was 42.2% down on the June quarter 2019
- Debt agreements: The number of debt agreements in the June quarter 2020 was 25% down on the June quarter 2019.

[Source: ASFA media release 28/07/2020]

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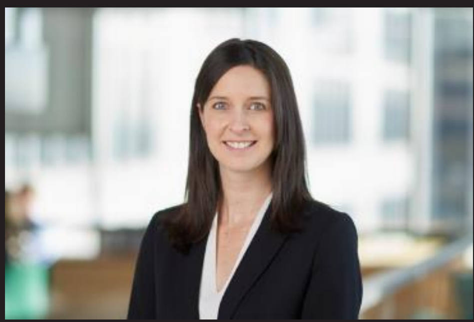

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