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Contents

Diversity

Losing momentum: WGEA data shows the gender pay gap stands at 20.1% but the number of firms acting to address it is declining

The Workplace Gender Equality Agency (WGEA) has released its latest gender equality scorecard tracking progress towards gender parity in Australian workplaces, including progress towards closing the gender pay gap.

The findings in the report are based on data provided by 4,943 employers (employing 40% of Australia's workforce) for the reporting period 1 April 2019 to 31 March 2020 in accordance with the Workplace Gender Equality Act 2012.

Some Key Findings

The gender pay gap continues to (slowly) narrow

- The gender pay gap, which the WGEA describes as 'the difference between the average earnings of women and men, expressed as a percentage of men's earnings' – has narrowed (slightly) year on year since 2013/14.
- For the 2019-2020 period women's average full-time base salary across all industries and occupations is on average 15% less or $15,144 per annum less than men's. This is a slight improvement on 2018-2019 when the gap stood at 15.5%.
- Women's average full-time total remuneration across all industries and occupations is on average, 20.1% less or $25,534 per annum less than men's, down from 20.8% in 2018-2019.

- The financial and insurance services sector remains the sector with the highest total remuneration gender pay gap at 27.5% or $45, 497 per annum (down from 29.3% in 2018-2019).
- Comparing earnings for full time employees in specific occupations, men continue to earn more than their female peers across every manager category and non-manager occupation. For 'key management personnel' the gap widens is 23.4% ($89, 141) and to 20.5% ($67,768) for 'other executives/general managers'.

Fewer employers are taking action on pay equity

- Slightly more organisations than last year (46.4% in 2019-2020 vs 44.7% in 2018-2019), conducted a gender pay gap analysis of their payroll data.
- However, of this group, almost half (45%) took no action to address the issue. The number of employers who did take action was 54.4% - down 6.1% decrease on last year.
- Looking at this more closely:
  – The proportion of organisations reporting pay equity metrics to the executive decreased 4.7% to 26.6%
  – The proportion of organisations taking corrective action decreased by 2% to 26.7%
  – The number of employers setting targets to reduce organisation-wide pay gaps increased 2.3% to 9.2%
- A common explanation (68.9% of cases) given for taking no action to address identified pay gaps was that tehre was 'no unexplained or unjustifiable pay gaps'.

A worrying loss of momentum

WGEA Director Libby Lyons described these findings as 'worrying' and cautioned business not to relegate the issue to the back burner.

> '…there has been a worrying drop of 6.1 percentage points in employers taking action on closing their pay gaps. Sadly, only 54.4% of employers who did a gender pay gap analysis took action to close the gaps. This trend must not continue. Experience tells us that when employers measure their data, identify their problem areas and take action to address it, the pay gap closes. Research shows that actions to close pay gaps are three times more effective when the results are reported to the executive or Board. Our economic recovery depends on utilising the skills and experience of a diverse, gender-balanced workforce. Women and men must have an equal opportunity to re-engage and participate in the workforce. Employers have an important role to play to make this happen by ensuring the momentum towards gender equality is sustained. It is good for business and integral to our economic recovery'.

The AFR and The Guardian quote Ms Lyons as further commenting that the lack of action confirms that 'gender fatigue' is setting in and that this risks halting the momentum on the issue.

[Sources: WGEA Gender Equality Scorecard 2019-2020; [registration required] The AFR 26/11/2020; The Guardian 26/11/2020]

Disclosure and Reporting

'Disappointing': The FRC's review of Corporate Governance Code reporting finds that overall reporting does not meet the FRC's expectations

Key Takeouts

- The UK Financial Reporting Council's latest Review of Corproate Governance Reporting found that overall, companies are failing to live either investor expectations or the FRC's expectations, with a number of companies adopting a 'tick box approach'.
- The FRC expresses concern that an 'unexpectedly high number of companies' claimed full Code compliance without demonstrating it in their reports. Where non-compliance was acknowledged, ofen the disclosure was 'boilerplate'.
- On the issue of workforce engagement, the report found that most companies are electing to appoint a designated non-executive director to the board, but provide little detail as to why they opted for this approach, what the role of the NED is/how the NED will engage with the workforce, or the outcomes of the NED's engagement efforts/the impact.
- In terms of the extent to which employee feedback is being factored into remuneration decisions, the report found no examples of reporting that described employee feedback received by the remuenration committee and what follow up actions were taken in consequence.
- The report also questions whether companies are sufficiently focused on shareholder concerns – for example, the report found that 67% of companies who experienced significant shareholder dissent due to remuneration issues, 'appear not to have addressed shareholder concerns at all'.
- Going forward, the FRC has identified five areas in which it would like to see improvements made. These are detailed at the end of this postt.

The UK Financial Reporting Council's (FRC) latest Review of Corporate Governance Reporting assessed the quality of a sample of reports from one hundred FTSE 100, FTSE 250 and small cap companies.

Overall, the FRC found that though there were some good examples of reporting, 'overall – reporting does not demonstrate the high quality of governance that the FRC expects'. For example, a number of companies were described as adopting a 'tick-box' approach to compliance with little useful detail or explanation in their reports.

Some Key Findings

Code Compliance statement

- The FRC expresses concern that an 'unexpectedly high number of companies' claimed full Code compliance without demonstrating it in their reports. For example, of the 58 companies in the sample who claimed full Code compliance, 43 did not report non-compliance with Provision 38 which recommends pension contributions for directors be aligned with the workforce, despite non-compliance with the provision.
- Where non-compliance was acknowledged, ofen the disclosure was 'boilerplate'.
- The report makes clear that the Code allows some flexibility and that full Code compliance is not necessarily expected. Rather, the FRC's expectation is that companies 'provide a clear and meaningful explanation of how a company's actual practices achieve good governance standards in line with flexibility offered by the Code even though they may not have fully complied with a Provision of the Code'.

Statement of purpose – less than a quarter of companies' reporting on purpose met FRC expectations

- Though 86% of companies included a purpose statement in their reports, the FRC found that the quality of varied considerably with many not living up to the FRC's expectations.

- Of all the reports in the sampls, less than a quarter (22%) of statements described a purpose that specifically articulated why the company existed, the market segment they operate in, their unique selling points, and/or how they intend to achieve their purpose'.
- In 11% of cases, the statement of purpose amounted to a 'marketing slogan'
- In 22% of cases, the statement was 'vague' and 'did not specifically articulate why the company existed, the market segment they operate in, their unique selling points, and/or how they intend to achieve their purpose'.

- The report found that many statements of lacked detail around how the company is 'generating value for shareholders and contributing to wider society'. For example, 45% of purpose statements either did not describe any social or stakeholder dimensions or only referenced them indirectly.
- The report found that it was not clear from the sample reports how boards are exercising their oversight function to ensure that their company's purpose works as a driver for company decision making. For example, 76% of reports did not clearly describe how the board satisfied themselves with the alignment of their purpose with their business practices.
- The FRC suggests that companies should refer to the FRC's guidance on purpose, and focus on ensuring that reports clearly demonstrate the connection bewteen purpose, values and strategy.

Culture – companies need to improve their reporting on how culture is monitored/asssessed

- The FRC welcomed the fact that almost all companies in the sample discussed their company culture, usually in a letter from the Chair.
- Overall, the FRC considers that 52% commented on their culture in a 'meaningful way' and 75% als commented on their values and linked this to culture.
- Better examples of reporting:
  - explained how the senior leadership teams had sought insight from all stakeholders (internal and external) when reviewing their culture and how their culture is linked to values and strategy.
  - clearly linked the actions to improve culture with associated KPIs
  - explained the link between supporting the health and wellbeing of the workforce and investing in training to achieve high performing culture.
- Although reporting on culture has improved compared to early adoption reporting last year, the FRC considers that reporting on how culture is monitored and assessed needs improvement. For example 20% of companies surveyed did not include any reference to how culture is being assessed or monitored.
- The FRC expects more companies to take a more 'rigorous approach to culture and set up effectiv ways of monitoring and assessing both the culture and its alignment with purpose, values and strategy, including setting out any actions taken in this area in line with Provision 2' of the Code.

Tenure, succession planning and board independence

- Succession planning: On the issue of board succession planning, the FRC found little improvement on the review published earlier in the year with reports overall providing minimal detail or insight into the board's actual succession plan. The FRC expects to see an improvement in reporting in this area, particularly where companies highlight succession planning as an outcome of a board evaluation. The FRC would also like to see improved 'cohesion bewteen diversity commitments, board evaluations and succession plans'.
- Chair tenure: Nine companies in the sample had a Chair who remained in the post beyond the recommended nine year peiod, and overall, the FRC considers that the explanations provided for this were 'poor' or non-existent. The report emphasises that unless there is a strong case for an individual to remain in the post beyond the recommended period, there is a risk that the board/company will become overly reliant on their views/skills. As a rule, the FRC considers that 'boards are more effective when they have a broad mix of skills, knowledge and experience and regularly refreshed'.
- Board evaluation – little detail on outcomes: The FRC states that there was an improvement in reporting around board evaluation processes, boards remain reluctant to disclose the details around the outcomes of the evaluation process or the steps being undertaken to address issues identified in past evaluations. The FRC states that 'reporting on board evaluations should not be approached as a compliance exercise. Instead, a clear set of recommendations, actions, and a time period for review of progress against agreed outcomes should be made'.

Diversity and inclusion

- The FRC found that though many companies stated the importance of diversity and diverse boards in their reports, they offered little explanation/evidence to bear out this out eg setting comprehensive diversity targets.
- For example, the FRC found that few companies had 'ambitious diversity targets across multiple under represented groups' for both the board and senior management.
  - Though a majority (63%) of companies included divesrity targets in their reports, few disclosed board diversity targets (beyond gender targets).
  - Just over a quarter of reports (26%) set targets for both the board and senior management. Where targets were set for senior management, 'diversity targets received far less attention than their board counterparts'.
- 37% of companies did not appear to have any voluntary diversity targets. The FRC comments that 'those which attempted to justify this approach said that ti was a deliberate decision due to their policy of recruiting "on merit"'. Commenting on this, the FRC states, that it 'expects to see all companies promoting and recruiting on merit. Those who use it as a justification for not actively pursuing diversity policies should demonstrate how their approach brings about diversity in the boardroom and workforce'.
- Parker Review: The FRC expresses concern that only 20 companies in the sample explicitly mentioned the Parker Review as one of their targets given that the deadline for meeting the diversity target set by the review is fast approaching – the Parker Review recommends that FTSE 100 boards include at least one female director from an ethnic minority background by 2021.
- The FRC encourages companies to enhance the clarity of their reporting on diversity and more particularly to: set appropriate targets for both senior management and the board and to ensure that it is clear from the report how they are tracking against them.

Remuneration

Overall, the FRC found that reporting on remuenration was mixed with improvements in reporting in some areas and generally poor reporting in others eg KPIs and pension contributions.

- KPIs:
  - 71% of companies in the sample dsiclosed non-financial KPIs. However, of this group, only 12 met the FRC's expectations by explainingthe choice of KPI, explained the design of the KPI and linked it back to the company's strategy.
  - 43% of companies used specific non-financial KPIs in either their annual bonuses, long-term incentive plans (LTIPs), or both. However, 30% specified 'only vague' personal or strategic objectives and a further 27% did not tie any non-financial KPIs to remuneration.
- Pension contributions: The FRC found that a number of companies are yet to a align pension contributions paid to executive directors with the rest of their workforce, despite the growing shareholder focus on the issue. The FRC cound the 43 companeis who claimed full Code compliance, did not demonstrate compliance with Provision 38 (pension contribution alignment). Only 32% of companies aligned director pension contributionsw ith the workforce, which the FRC comments is a far lower proportion of companies than expected.
- Remuneration committee workforce engagement: Provisions 33 and 41 of the Code state that remuneration committees should take into account workfroce views in the context of setting the remuneration policy for executive directors and to ensure that executive remuneration aligns with wider company pay policy. The FRC found no examples of reporting that described employee feedback received by the remuenration committee and what follow up actions were taken in consequence. The FRC flags this as an area for improvement, stating that it expect to see companies ;reporting the steps that they have taken to engage their employees on their remuneration policies'.
- Workforce pay: 83% of companies reported on workforce pay (dsiclosed a pay comparison between the CEO and a group ofemployees as well as CEO pay ratio disclosures). The FRC commenst that this is primarily due to recent changes in the law.
- Exericse of the remuneration Committee's discretionary powers: The FRC found that 'a clear majority' of companies provided a full explanation of their remuneration committee's discretionary powers including details around malus/clawback, bonuses and LTIPs. There were also a number of examples of reports that included examples of situtations in which the remuneration committee exercised its discretion and why.

Stakeholder engagement

- **Section 172 statements:** Overall, the FRC concluded that cmpanies are not providing sufficiently detailed information in their section 172 statements.
  - The FRC found that though nearly all companies referenced some form of engagement, the engagement efforts described were 'often a one sided exercise' eg providing presentations or visits to suppliers/customers. The FRC comments that though these activities could potentially become meantingful engagemements, few companies demonstrated this in their reporting.
  - The outcomes of engagement were often described in general terms and it was not clear what actions were taken in response/how the outcomes were reflected in subsequent decision making.
  - Only a small number of companies detailed the metrics used to measure the success of their stakeholder engagement efforts.
  - Most companies did not report on any mechanism through which stakeholders could independently raise issues. Where a mechanism was disclosed, it was typically limited to whistleblowing processes.

Workforce engagement

The Code recommends that, in line with directors' obligations under s172 of the Companies Act 2006 (UK), boards should engage with their workforce using one or more of the following methods: 1) appointing a worker director; 2) establishing a formal workforce advisory panel; and/or 3) appointing a designated non-executive director (NED). Where boards opt not to use one or more of these methods, the Code enjoins them to explain what alternative arrangements are in place and why the board considers them to be effective.

Overall, the FRC's expectation is that reports should include detailed information about how the chosen workforce engagement mechanism enables the views of the workforce to be drawn to the board's attention and the outcomes of that engagement.

The review found that there is room for improvement.

- **Appointing a designated NED:** Consistent with the findings of the Spencer Stuart Index (for a summary see Governance News 11/11/2020 at p4) the FRC found that the most popular option was to appoint a designated NED to the board – 40% of the companies sampled took this approach. The FRC found that despite the fact that reports indicated that companies had decided on this approach because they considered it to be the most appropriate option, detail was lacking on why this was the case. The FRC comments that in most cases, the NED's role was left undefined and what information was provided was 'ambiguous and limited'. The FRC also found there was overreliance on the results of staff surveys/use of NED-led staff visits to ensure employee voices are heard and a lack of substantive information about the impact the NED's activity had on decision making/outcomes.

- **Alternate arrangements:** 31.7% did not adopt any of the three options given in the Code. Though some companies indicated that this was because they considered their existing practies to be adequate, others indicated that theya re planning to strengthen their existing practices, though they did not provide much information about how. Some companies also highlighted the importance of all NEDs engaging with the workforce to understand the workforce views, but the majority of these were observed to be reliant on the use of annual engagement surveys (and possibly the use of Q&A sessions/internal interactions).

- **Workforce advisory panel:** 11.7% elected to establish a workforce advisory panel. The FRC comments that the information provided indicated a 'more robust and structured process for obtaining employee views' as compared with the information provdied on the roles of the NEDs. However, the FRC also comments that there was a lack of detail provided around how the panel's activities impact board decision making. The report observes that some companeis have adopted a 'hybrid model' with a designated NED chairing the workforce advisory panel, which the FRC considers has the benefit of enabling two way comunication between employees and the board.

- **Worker director**: Only 2% of companies opted to appoint a workforce director. The FRC comments that in light of the very small sample, there is insufficient information to draw conclusions.

- **The choice of mechanism was not always clear:** The FRC comments that while the majority of companies disclosed their choice of mechanism, it was unclear from the report why they considered their choice to be the most effective option for their company. The FRC adds that 'there was a degree of difficulty' in identifying which of the three suggested mechanisms or alternate arrangements were being adopted in some reports.

Lack of focus on shareholder concerns

The FRC used the Investment Association's Public Register – the register tracks significant opposition by shareholders to resolutions and any resolutions withdrawn before a shareholder vote at listed companies – to track responsiveness to shareholder concerns.

- The FRC's analysis of companies due to submit their six month update after the shareholder meeting by 31 October identified that 40% of companies made no announcement.
- 67% of companies who experienced significant shareholder dissent due to remuneration issues, 'appear not to have addressed shareholder concerns at all'.

The FRC comments that this is 'deeply concerning' as it signals both non-compliance with the conde and a 'lack of regard for significant shareholder concerns'.

The FRC's expectation is that companies 'genuinely engage with a wide spectrum of their shareholders, not only the largest few, to understand and try to address their concerns as far as practically possible'. The FRC also expects that wider stakeholder and shareholder views and actions taken in response are communicated clearly and 'within a specified timeframe'.

Expectations going forward

Overall, the FRC wants to see companies providing clear, detailed information about how they are meeting each of the Code provisions, or where they are not doing so, a clear explanatio as to why. A key message is that companies should avoid a 'tick box' approach and/or the use of high level 'boilerplate' in reports.

More particularly, the report identifies five areas where the FRC would expects improvements going forward.

- Purpose: The FRC expects companies to have a well-defined purpose and for reports to clearly explain the progress being made towards achieving it.
- Stakeholder engagement: On the issue of stakeholder engagement, the FRC would like to see discussion of the issues being rasied by stakeholders, the topics considered, the feedback received during engagement with shareholders and employees and how this is impacting decision-making, strategy and the long-term success of the company.
- Remuneration: Reports should show the impact of engagement with stakeholders on remuneration policy and outcomes including the imapct that engagement with the workforce has had on executive remuneration policy.
- Culture: The FRC would like to see more focus on assessing and monitoring culture including consideration of methods and metrics used
- More detailed reporting on diversity, board evaluation and succession planning: The FRC states that it would like to see more attention paid to these issues in reporting, and generally, more detailed information included in reports.

[Sources: FRC media release 26/11/2020; Review of Corporate Governance Reporting]

Towards simpler, comprehensive sustainability reporting? The SASB and IIRC will merge into a new Value Reporting Foundation

The International Integrated Reporting Council (IIRC) and the Sustainability Accounting Standards Board (SASB) have announced plans to merge into a new organisation, the Value Reporting Foundation (Foundation) in 'mid 2021'.

The purpose of the merger is to progress work towards a simpler more comprehensive reporting system, in line with investor demands. This will be achieved through developing existing links between concepts in the existing <IR> Framework and the SASB Standards which are already being used, in combination, by a number of organisations.

As such, the merger will advance the work of CDP, CDSB, GRI, IIRC and SASB as outlined in the Statement of Intent To Work Together Towards Comprehensive Corporate Reporting released in September.

Over time, other groups are expected to join the Foundation – according to SASB/IIRC's joint statement, some have already expressed interest in doing so.

The new Foundation will be headed by SASB CEO Janine Guillot.

[Source: Joint IIRC/SASB media release 25/11/2020]

Institutional Investors and Stewardship

State Street Global Advisers is set to join Climate Action 100+

State Street Global Advisors (SSGA), has announced it will join the Climate Action 100+ investor initiative.

Climate Action 100+ has seen a 142% growth in the number of signatories since the initiative first launched in 2017, with three of the top twenty asset managers – BlackRock, Invesco and no SSGA – all joining in 2020. The initiative now includes 545 institutional investors with $52 trillion in assets under management.

The statement says that SSGA regards joining the group as an important extension of its stewardship activities.

> 'In joining Climate Action 100+, we look forward to sharing with our peers what we've learned in our engagements with more than 600 companies across multiple industries and markets on climate-related issues since 2014. We also are excited about this opportunity to work closely with other asset managers and asset owners to scale our impact on climate change risks. For us, driving more transparency around climate change risk and its impact on long-term value is urgent'.

SSGA's announcement has been welcomed by other signatories.

[Sources: State Street Global Advisers announcement; IGCC media release 01/12/2020]

The EU ombudsman has called on the Commission to tighten guidelines following an inquiry into BlackRock's appointment as ESG adviser

Context

- The European Commission is developing plans for the integration of ESG factors into the EU's banking prudential framework.
- As part of this work, the Commission awarded a contract to BlackRock to undertake a study into the current situation and the challenges in dealing with the issue, following a tender process. BlackRock was selected from a pool of nine bidders.
- Subsequently, European Ombudsman Emily O'Reilly received three complaints about the Commission's decision to award the contract to BlackRock: two from members of the European Parliament and one from civil society group.
- This prompted the ombudsman to open an inquiry into how the Commission evaluated BlackRock's application in the call for tender process.

No maladministration, but current processes should be tightened

The Ombudsman determined that 'there are legitimate concerns around the risk of conflicts of interest that could negatively impact the performance of the contract' given BlackRock's interest in future EU regulation of this kind.

However, though she found that the Commission should have been more rigorous in its assessment of BlackRock's application, and more particularly that the Commission should have done more to verify that appropriate safeguards were in place to manage conflicts of interest, the Ombudsman did not conclude that this amounted to maladministration in light of the limitations of the EU rules on awarding contracts.

The Ombudsman determined that the Commission's internal guidance on public procurement does not place sufficient weight on identifying possible conflicts of interest or ensuring there are adequate processes in place to manage them. The ombudsman states,

> 'Questions should have been asked about motivation, pricing strategy, and whether internal measures taken by the company [Blackrock] to prevent conflicts of interest were really adequate'.

The ombudsman called on the Commission to improve its guidelines for assessing bidders for contracts related to public policy.

In addition, the Inquiry found that the relevant definition in the Financial Regulation - the EU law governing how public procurement procedures financed by the EU budget are conducted - of what constitutes a conflict of interest 'is too vague to be helpful'.

The Ombudsman asked the Commission to consider strengthening the conflict of interest provisions in the Financial Regulation.

[Sources: European Commission Ombudsman media release 25/11/2020; Ombudsman's full decision]

Markets and Exchanges

Consultation on proposed Listing Rules changes

Key Takeouts

- ASX is consulting on proposed changes to the Listing Rules. ASX states that the changes are primarily intended to support the introduction of new/updated online forms which will be released in the new year.
- Other propsoed changes include changes to requirements around the cancellation or deferral of previously announced dividends, distributions and interests payments and clarification of the definition of 'employee incentive plan' (among others).
- The deadline for submissions to the consultation is 24 December 2020.

Proposed changes to the Listing Rules

The ASX is consulting on proposed changes to the Listing Rules. The due date for submissions is 24 December 2020.

Proposed changes to the Listing Rules include those summarised in the table below. The ASX has provided a marked up version of the proposed changes with explanatory notes here.

PROPOSED CHANGE	DETAILS
Changes to requirements around the cancellation or deferral of previously announced dividends,distributions and interests payments	**Proposed changes** ASX is proposing to: ▪ Amend Listing Rules 3.21 and 3.22 to require an entity to immediately notify ASX where a decision is made to cancel/defer a dividend, distribution or interest payment on a quoted secruity that it has prviously announced it will pay. ▪ Add a new Listing Rule 12.13 providing that an entity that has given an Appendix 3A.1 or Appendix 3A.2 to ASX announcing a dividend, distribution or interest payment on a quoted security and nominating a record date for determining the security holders entitled to it and the date on which it will be paid, can only change the amount and/or the date for payment of the dividend/distribution or interest payment if: – it would be contrary to law to pay it on the announced date; or – the entity has given ASX notice of the change before noon (Sydney time) on the business day prior to the ex date specified in the Appendix 3A.1 or Appendix 3A.2 (as applicable). **Rationale**: ASX states that during COVID-19, a number of listed entities cancelled or deferred dividends that had previously been announced to the market which caused 'major back office difficulties for custodians and registries' as well as 'consternation in the market'. The changes are intended to address these issues.
Clarification of the definition of 'employee incentive plan'	**Proposed changes** ▪ ASX proposes to amend the definition of 'employee incentive plan' in Listing Rule 19.12 to 'clarify the drafting' and to add a note stating that a scheme can still be an employee incentive scheme for the purposes of the Listing Rules even if a participating employee/director is required to pay full price for the issue/acquisition of equity securities under the sceme. **Rationale:** ASX states that the proposed changes is intended to make clear that a non-executive directors' share purchase plan is an employee incentive scheme for the purposes of the Listing Rules (including Listing Rule 3.10.3A).
Extended timetable for corporate actions in Appendices 6A and 7A	**Proposed changes** ▪ ASX proposes to extend the timetable for corporate actions in Appendices 6A and 7A to 5 days (ie ASX proposes to extend the current 3 business day deadline after the relevant business event to 5 business days) for an entity to announce: – 'the results of a standard non-renounceable pro rata issue or standard renounceable pro rata issue – the results of the retail offer in an accelerated non-renounceable entitlement offer accelerated renounceable entitlement offer or simultaneous accelerated renounceable entitlement offer, or an accelerated renounceable entitlement offers with retail rights trading – the results of an SPP'. ▪ ASX also proposes to make other 'minor changes' to the timetables for 'clarity, consistency and/or completeness'. **Rationale:** ASX says that the extension reflects feedback from share registries that 3 business days is a very tight deadline for them to complete the necessary reconciliations before announcing these results.
Making the deadline for quotation of securities consistent	**Proposed changes** ▪ ASX proposes to amend Listing Rule 2.8.3 to reduce the deadline for applying for quotation of securities issued as a consequence of the conversion of unquoted convertible securities from 10 business days following their conversion, to 5 business days from:

PROPOSED CHANGE	DETAILS
	– the date of their conversion (where the convertible securities automatically convert into the underlying securities without any further issue); or – the date the underlying securities are issued (where the conversion process requires the underlying securities to be issued). **Rationale:** ASX states that the proposed change is intended to bring the deadline for quotation of securities into alignment with the 5 business day deadline for seeking quotation of securities in other situations.
Drafting changes Listing Rules 3.10.3 – 3.10.3D	**Proposed changes** ▪ ASX proposes to make 'drafting changes' to Listing rules 3.10-3.10D including the additional of a number of explanatory notes, to make them easier to follow and generally clearer.

New and updated online forms

ASX is also proposing to make amendments to the Listing Rules Listing Rules 3.8A, 3.10.1, 3.10.3 – 3.10.3E and Appendix 6A and 7A to facilitate the introduction and operation of new/updated STP forms.

The forms are:

- Proposed new Appendix 3C Notification of buy-back: This new form is intended to combine and replace the existing Appendices 3C, 3D, 3E and 3F notices relating to buy-backs
- Proposed new Appendix 3H Notification of cessation of securities: ASX proposes to introduce this new form in response to feedback from listed entities that they are confused by the absence of a prescribed form to notify ASX of the cessation of their securities. ASX is also proposing to add a new Listing Rule 3.10.3E requiring a listed entity to notify ASX within 5 business days of the cessation of any equity securities or of any quoted debt securities that has not otherwise been notified to ASX under Listing Rules 3.10.3B or 3.10.3D. Entities will be required to use Appendix 3H for this purpose. It will no longer be possible to use the online version of the Appendix 3B for this purpose.
- Proposed amendments to Appendix 2A Application for quotation of securities
- Proposed amendments to Appendix 3A.1 Notification of dividend/distribution
- Proposed amendments to Appendix 3A.2 Notification of interest payment & interest rate change
- Proposed amendments to Appendix 3A.5 Notification of return of capital by way of in specie distribution of securities in another entity
- Proposed amendments to Appendix 3B Announcement of proposed issue of securities
- Proposed amendments to Appendix 3G Notification of issue, conversion or payment up of equity securities

Timing

The deadline for submissions to the consultation is 24 December 2020.

Final rule amendments are expected to be released in February 2021 and to take effect on 20 March 2021 (to coincide with the next round of STP forms).

[Sources: Listed@ASX Compliance update 01/12/2020; Consultation paper]

Financial Services

Top Story | Draft legislation to implement the proposed Your Future Your Super reform package released for consultation

Treasury has released a package of draft legislation for consultation proposing to implement the government's Your Future, Your Super reforms which were announced in the Federal Budget.

The due date for submissions is 24 December 2020. Generally, the proposed commencement date for the changes is 1 July 2021.

Consistent with the government's previous announcement, the reform package includes four key elements.

- Superannuation account follows (is 'stapled' to) the employe: The proposed changes include a new requirement for employers to make contributions into new employees' existing 'stapled' superannuation funds (provided that they have one and unless they choose an alternate fund).
- Introduces a new annual performance test:
  - The Australian Prudential Regulation Authority (APRA) will conduct an annual performance test for MySuper products, and other products (to be specified in regulations).
  - Where a product fails the test, for two consecutive years, no new members will be unable to sign up to the product.
  - APRA will be able to lift the prohibition in certain circumstances (to be specified in the regulations) are met.
- Enables the establishment of a new online comparison tool: Superannuation products will be ranked by APRA and these rankings will be published on an interactive website maintained by the ATO to enable members to more easily compare funds.
- Strengthens existing requirements for trustees to act in the best interests of their members by specifying that trustees are requiredto act in the best financial interests of members.

Further detail: The four point reform package

1. Superannuation accounts will follow (be 'stapled' to) employees

- If enacted, the changes will introduce a new requirement for employers to pay superannuation contributions into a new employee's existing 'stapled' fund.
- Under the new rule, where a new employee starts their employment on or after 1 July 2021 and has not chosen a fund to receive superannuation contributions, employers will be required to request that the Commissioner of Taxation identify whether the employee has a stapled fund.
  - If advised by the Commissioner that the employee has a stapled fund, employers will be required to pay contributions into that fund. This applies even if an existing workplace determination or enterprise agreement is already in place.
  - If advised by the Commissioner that the employee does not have a stapled fund, an employer can opt either: pay contributions into a default fund chosen by the employer, or into a fund specified under a workplace determination or an enterprise agreement made before 1 January 2021.
- The draft explanatory memorandum makes clear that employers are required to seek information about whether the employee has a stapled fund from the Commissioner and cannot determine this themselves.
- The draft explanatory memorandum states that a new digital service will be established and maintained by the Australian Taxation Office to receive requests from employers and provide them with notifications for this purpose.

What is a 'stapled fund'?

- The draft explanatory memorandum states that a 'fund is a stapled fund for an employee if the requirements prescribed by the regulations [not yet released] are met'.

- The draft explanatory memorandum states that regulations (not yet released) will designate what requirements must be satisfied for a fund to be a 'stapled fund' including the requirement that the fund is an existing fund of the employee and is able to accept contributions. It's also 'anticipated' that regulations will include 'tie-breaker rules' to enable the selection of a single fund where an employee has multiple existing funds.

The measure is intended to address the issue of multiple accounts and will implement the government's response to Recommendation 3.5 of the Hayne Commission and Recommendation 1 of the Productivity Commission Superannuation Inquiry.

Proposed timing/implementation date

It's proposed that these changes will only apply to new employees whose employment commences on or after 1 July 2021. Arrangements for existing employees (those who are employed before 1 July 2021) would not be impacted by the changes.

2. Introduction of a new product performance test

If enacted, the changes will mean that:

- APRA will be required to conduct an annual performance test of MySuper products and other products specified in regulations (eg trustee directed products) each financial year and to notify trustees of the result.
- The requirements for the annual performance test will be set out in regulations (not yet released). The draft explanatory memorandum flags that the regulations may allow different performance requirements for different products and provide APRA with flexibility in applying the test.
- Trustees of superannuation products that fail the annual test will be required to notify beneficiaries who hold the product that the product has failed within 28 days of APRA giving them notice of the test result (with regulations, not yet released, prescribing the requirements for the notice). The draft explanatory memorandum states that the regulations may specify that information relating to the ranking of products be included in the notification (eg by including a reference to the new YourSuper superannuation comparison tool).
- Where a product fails the test in two consecutive years, it will be closed to new beneficiaries. The prohibition will remain in place until APRA lifts the prohibition. This will occur once circumstances specified in the regulations (yet to be released) are satisfied.
- These obligations will be part of the section 52 covenants, and as such, a contravention will be subject to a civil penalty. Where the contravention involves dishonesty or an intention to deceive or defraud, a criminal offence applies.

New resolution planning prudential standard making power for APRA

If enacted, the changes will mean that APRA will be given a 'resolution planning prudential standard making power that relates to the resolution of an RSE licensee, a registrable superannuation entity or a connected entity of an RSE licensee, in order to best protect the interests of beneficiaries'.

The draft explanatory memorandum states that this is necessary to ensure that APRA

> '…has clear powers to set appropriate prudential standards on resolution planning, and ensure that RSE licensees put in place measures to improve their preparedness for resolution. This allows APRA to ensure RSE licensees are prepared for a range of contingencies, including the possibility that the prohibition against accepting new beneficiaries into a product may lead to a material deterioration in the financial condition of the regulated superannuation fund.'

Proposed timing and implementation

- It's proposed that the amendments relating to the new annual performance test will apply to MySuper products from 1 July 2021 and to and other products specified in regulations 1 July 2022.
- It's proposed that APRA's new resolution planning prudential standard making power will apply on the day after Royal Assent.

3. Enables the establishment of a new YourSuper comparison tool as announced in the Federal Budget.

- As announced in the Federal Budget, the Your Super Your Future Package includes the establishment of an online superannuation product comparison tool, which is intended to enable members to more easily assess the performance of superannuation products and make comparisons between products.
- To facilitate this, and to provide transparency around the basis of the product rankings, its proposed that regulations will be made specifying one or more formulas for the ranking of superannuation products (by reference to 'relative fee levels, investment returns or any other criterion') by APRA. APRA's rankings will then be published on a new interactive website which will be maintained by the ATO.

4. Increased trustee accountability – new best financial interests test

If enacted, the proposed changes will mean that:

- Trustees of registrable superannuation entities (RSE) and trustees of self managed super funds (SMSFs) will be expressly required to perform their trustee's duties and to exercise their powers in the best **financial** interests of beneficiaries.
- Likewise, directors of the corporate trustee of a registrable superannuation entity will be required to perform their director's duties and to exercise the director's powers in the best financial interests of the beneficiaries.

It's proposed that the new best financial interests obligation will not be subject to any materiality threshold.

The draft explanatory memorandum makes clear that the purpose of the changes is to clarify the existing best interests duty.

> 'The purpose of this amendment is to clarify the range of interests covered by the obligation solely to financial interests (not non financial interests). Subject to the trustees complying with the sole purpose test, this does not preclude trustees undertaking actions that also yield non-financial benefits to the beneficiaries, but the action cannot compromise the best financial interests of members. How any action will yield financial benefits to the beneficiaries of the superannuation entity must be the determinative consideration for any trustee'.

The draft explanatory memorandum (p9) includes several examples of expenditure that is unlikely to be in members' best financial interests, and expenditure that is likely to meet the best financial interest test.

Reversal of the evidential burden

The draft Bill also proposes to reverse the evidential burden of proof so that the onus would be on trustees/directors of corporate trustees to prove they performed their duties/exercised their powers in the best financial interests of beneficiaries.

The draft explanatory memorandum states that this is intended to:

> …'emphasise to trustees and directors of corporate trustees that they need to have strong systems and processes in place to ensure that all actions they take can be demonstrated to be in the best financial interests of beneficiaries. It should also highlight the need for trustees to keep clear records of the decision-making process'.

The draft explanatory memorandum states that the reversed onus will only apply to actions brought by a regulator and will not apply in private actions against trustees brought by beneficiaries (eg class actions).

The evidential burden of proof is not reversed for trustees of SMSFs, though the draft explanatory memorandum notes that SMSF trustees found not to be acting in the best financial interests of beneficiaries could be penalised under other regulatory provisions fo the Superannuation Industry (Supervision) Act.

Other proposed changes

In addition, if enacted, the changes will mean that:

- Regulations may be made prohibiting certain payments/prohibiting them unless certain conditions are met, regardless of whether the payment is considered to be in the best financial interests of beneficiaries.
- Regulations may be made making a contravention of a record keeping obligation (specified in regulations) a strict liability offence.

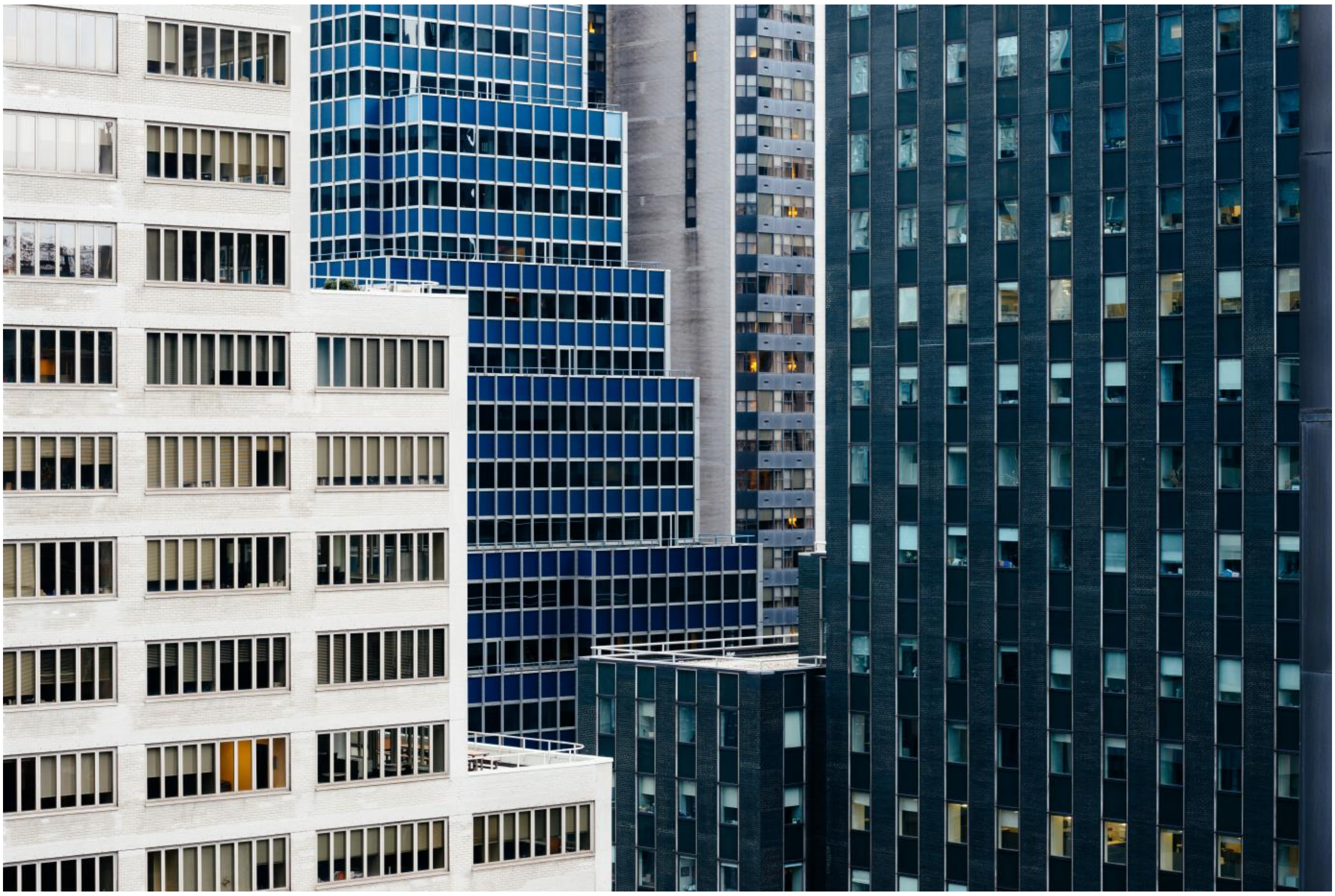
Proposed timing and implementation

It's proposed that:

- the new best financial interests duty will apply in relation to dutiesthat are performed /powers exercised on/after 1 July 2021.
- the amendments relating to the reversal of the evidential burden apply in relation contraventions that occur on or after 1 July 2021.
- the amendments relating to record-keeping will apply to contraventions that occur on or after 1 July 2021.
- the amendments allowing regulations to prohibit certain payments and investments will apply from the day after Royal Assent

[Sources: Your Future, Your Super reform package]

COVID-19: Funds have now paid out $35.3 billion 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 22 November 2020.

- Total payments made since the inception of the scheme have taken an average of 3.3 business days to process, with 95% of payments made within five business days.
- Over the week to 15 November, superannuation funds received 20,000 applications (up from 18,000 in the week to 15 November)
- Of the applications received in the week to 22 November, 14,000 were initial applications bringing the total number of initial applications received to date to 3.4 million since inception of the scheme.
- 7,000 applications were repeat applications, bringing the total number of repeat applications to 1.4 million since the inception of the scheme.
- Over the week to 22 November funds made payments to 20,000 members worth $146 million (down from $151 million in the previous week).

- Funds have made approximately 4.6 million payments since inception worth a total of $35.3 billion paid since inception.
- The average payment made over the period since inception is $7,650 overall and $8,312 when considering repeat applications only.

[Source: APRA media release 30/11/2020]

Payday loans and consumer leases: Private member introduces the government's own SACC Bill, CALC has called on the government to support it

Independent MP Andrew Wilkie introduced a Bill on 30 November — the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2020 — aimed at strengthening consumer protections on payday loans (small amount credit contracts (SACCs)) and consumer leases. The Bill is a replica of exposure draft legislation released by the government in 2017 (but never introduced).

[Note: On 28 November 2016 the Government released its response to the Review of the Small Amount Credit Contract laws. On 22 October 2017-3 November 2017 the government consulted on exposure draft legislation — National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2017 — proposing to implement the government's response.]

Separately the legislation has also previously been introduced by other parliamentarians Tim Hammond MP and Rebekha Sharkie MP and most recently by Senators Griff and McAllister.

What's being proposed

Broadly, the Bill proposes to:

- impose a cap on the total payments that can be made under a consumer lease
- require SACCs to have equal repayments and equal payment intervals
- remove the ability for SACC providers to charge monthly fees for the residual term of a loan where a consumer repays their debt early
- prevent lessors and SACC providers from undertaking marketing of consumer leases at residential homes
- introduce broad anti-avoidance protections to prevent SACC loan and consumer lease providers from circumventing the directives and protections contained in the National Credit Act and the National Credit Code
- strengthen penalties for lessors and SACC providers

The Bill also proposes to facilitate two other regulatory changes:

- reduce the protected earnings amount cap for SACCs from 20% of a consumer's gross income to 10% of their net income for each payment period, where they are a Centrelink recipient. SACC providers would also be prevented from issuing loans if it would result in SACC repayments exceeding the lower protected earnings cap.
- amend the credit regulations to implement a new similar protected earning amount for consumer leases for household goods. Lessors would also be prohibited from entering into a lease contract where this would result in all of the customer’s consumer lease contract repayments exceeding 10% of their net income for each payment period.

The introduction of the Bill follows the government's recent consultation on proposed changes to consumer credit laws, including winding back responsible lending obligations.

Consumer Action Law Centre welcomes the introduction of the Bill

In a statement, the Consumer Action Law Centre (CALC) welcomed the introduction of the Bill on the basis that if passed, it would 'greatly reduce the harm that high-cost payday loans and consumer leases cause to thousands of Australians'.

CALC's statement contrasts the measures in the Bill favourably with the government's proposed responsible lending reforms, which CALC considers water down consumer protections.

CALC CEO Gerard Brody suggests that the introduction of the legislation by not only Mr Wilkie, but other parliamentarians, suggested that there is a high level of concern about the impact of payday loans and consumer leases on consumers. Mr Brody called on the government to support the Bill on this basis. He said, 'It's clear there is real concern from many parliamentarians that laws need to be enacted to rein in harmful credit products like payday loans and consumer leases. We call on the Federal Government to allow either of these Bills to be enacted. Without this, people will continue to be charged far more than is reasonable for consumer leases, and repayments will continue to take away a larger portion of the income of vulnerable working Australians. The COVID-19 recession is causing financial stress for many—with other support being wound back, it would be a disaster if more people were pushed on to exploitative and high-cost credit to survive.'

[Sources: National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2020; Explanatory Memorandum; Consumer Action Law Centre media release 30/11/2020]

APRA is consulting on aligning its capital and reporting frameworks with AASB 17

The Australian Prudential Regulation Authority (APRA) is consulting on plans to align its capital and reporting frameworks for life, general and private health insurance with AASB 17 (where appropriate) to maintain alignment between the regulatory framework and the new accounting standards.

APRA is also updating the Life and General Insurance Capital (LAGIC) framework which has not been 'substantively reviewed' since it was first implemented in 2013. APRA states that the proposals are not expected to 'significantly change minimum capital requirements or materially impact premiums'.

Timing

- The closing date for submissions on the discussion paper is 31 March 2021.
- APRA is expected to release updated capital and reporting standards in late-2021 for further consultation.
- The final APRA capital and reporting standards will become effective from 1 July 2023

[Sources: APRA media release 25/11/2020; Discussion paper: Integrating AASB 17 into the capital and reporting frameworks for insurers and updates to the LAGIC framework; Supporting documentation]

COVID-19: Temporary loan deferrals more than halved in October

The latest Australian Prudential Regulation Authority (APRA) data on loans subject to temporary COVID-19 deferrals shows that:

- The total value of loans subject to deferral more than halved over the month of October. As at 31 October $88 billion of loans remained frozen, representing 3% of total loans (down from 7% in September)
- Exits from deferral increased signifcantly in October: $100 billion of loans expired or exited from deferral in October 2020 (up from $66 billion in September 2020 and $24 billion in August 2020)

[Source: APRA media release 30/11/2020]

LIBOR transition: ASIC has issued guidance on managing conduct risk

Context

The publication of London Inter-Bank Offered Rate (LIBOR) is expected to cease after the end of 2021. Though some efforts have been made by the financial services industry to transition to alternative reference rates (ARRs) the Australian Securities and Investments Commission (ASIC) considers that 'entities have significant tasks ahead' to ensure a smooth transition, especially with respect to managing conduct risk.

Information sheet 252: Managing conduct risk during LIBOR transition

ASIC has released an information sheet - Information Sheet 252: Managing conduct risk during LIBOR transition (INFO 252) – outlining the practical steps that it expects entities to take to manage conduct risk during the LIBOR transition. The strong focus is on ensuring customers are treated fairly and that communication about the cessation of LIBOR is clear.

ASIC Commissioner Cathie Armour said

'Firms need to apply fair judgement and professional diligence when dealing with clients during LIBOR transition. This includes having robust arrangements in place to mitigate conduct risk that may arise during the transition process. This guidance is a part of our commitment to assist the industry in enhancing the overall LIBOR transition preparedness in Australia.'

The information sheet outlines ASIC's expectations around the fair treatment of clients; representation of product performance; client communication strategies; and practical steps to minimise conduct risk in each case. The guidance also sets out how existing risk frameworks can be adapted to factor in risks associated with LIBOR transition and ASIC's expectations around accountability.

Among other things, ASIC expects that:

- Firms take steps to review LIBOR referenced contracts to include 'robust fallback rates' as recommended by relevant international bodies.
- As soon as practicable, firms 'stop the sale and issuance of LIBOR-referenced contracts that expire after the end of 2021 if they do not have robust fallbacks or appropriate client communication'. ASIC cautions that 'issuing long-dated LIBOR contracts that expire after the end of 2021 without a fallback or adequate communication could be considered misconduct – particularly if clients were led to believe these products or services would continue to perform as they did before LIBOR cessation in the absence of an appropriate fallback'.
- Firms are also expected to be proactive in ensuring their clients are aware of the cessation of LIBOR and of the practical implications of this. The information sheet outlines details of the level of detail ASIC expects and the points that firms should cover.

The guidance also outlines ASIC's expectations of buy-side entities – the key issue, is that ASIC expects entities to ensure their clients are not disadvantaged during the transition (including ensuring that appropriate resourcing is in place).

[Sources: ASIC media release 30/11/2020; Information Sheet 252: Managing conduct risk during LIBOR transition]

In Brief | Hayne case study: ASIC has commenced proceedings against a big four bank for (allegedly) overcharging customers a total of $2.9m in interest on business overdraft accounts on 12,119 occasions during the period December 2011 and 31 March 2018

[Sources: ASIC media release 01/12/2020; CBA media release 01/12/2020]

In Brief | Ensuring compliance with prudential standards: APRA has announced it is taking action against a big four bank for breach of liquidity standards. Though the issues have already been rectified, and though there are no concerns over the bank's liquidity position, the regulator will nevertheless require comprehensive reviews by independent third parties of the bank's compliance and require the bank to apply a 10% weighting to its liquidity coverage ratio until APRA's concerns are addressed

[Sources: APRA media release 01/12/2020; Westpac media release 01/12/2020]

Risk Management

Internal audit as 'change agents': ASIC Commissioner Sean Hughes outlines the role internal audit should play in lifting industry standards in the financial services sector

In a speech to the Financial Services Assurance Forum, Australian Securities and Investments Commission (ASIC) Commissioner Sean Hughes spoke about ASIC's continuing focus on the protection of vulnerable customers in the broad sense, and more particularly the regulator's expectations of internal audit and compliance functions in this context.

Among other things, Mr Hughes spoke about the important role that internal audit and compliance functions should play in preparing for forthcoming design and distribution obligations (DDOs).

Ensuring full compliance with design and distribution obligations 'from day one'

Mr Hughes said that the failings in product governance arrangements identified by the Financial System Inquiry and more recently by the Hayne Commission could have be prevented through stronger internal risk governance processes. Going forward, he said that ensuring full compliance with the DDOs will ensure similar issues do not recur.

Mr Hughes emphasised the pivotal role that internal auditors are expected to play in this context - 'As internal auditors and compliance professionals, you are well-placed to be the agents of change here, by assessing and improving your risk management and governance processes ahead of the commencement of DDOs on 5 October 2021'.

Mr Hughes went on to say that 'by meaningfully engaging' with DDOs and product governance arrangements, industry 'can go a long way to addressing consumer harm' and that over time, this will enable ASIC to step back.

> 'Over time, as recognised by the Financial System Inquiry, compliance with the obligations may result in the need for less prescriptive regulation in the future and the potential for deregulatory initiatives. To achieve this, though, compliance is essential. ASIC expects compliance with the design and distribution obligations from Day One. In order to do this, industry needs to invest in their systems now and ensure they are properly able to monitor the outcomes of their products come 5 October next year'.

With this in mind, Mr Hughes put forward a list of seven questions that he suggested should be put to senior executives now.

1. 'Are we getting ready for DDOs?
2. Do we have the data we need to ask and answer fundamental business questions?
3. Do we know our target market for this product?
4. Does it meet their needs?
5. Is this product of value to that target market?
6. Do our distribution controls, included our chosen distribution channels, mean it's getting to our target market?
7. Would we know if it wasn't?'

Investment in data and systems is 'long overdue'

Mr Hughes also emphasised the imperative for firms to invest in appropriate systems and data noting that ASIC's supervisory work had identified poor data technology/systems/processes as a 'root cause' of poor practices within regulated entities. For example, he said that ASIC's review of breach reports had identified underinvestment in technology as a root cause of the reported breaches in between 40% and 70% of cases.

Mr Hughes said that that he failure to have appropriate systems in place creates operational risks with the combination of poor systems and poor governance often resulting in delays in picking up problems and ultimately in lengthy and costly remediation programs.

Mr Hughes called boards prioritise investment in appropriate data and systems, noting that doing so is long 'overdue'. In saying this, Mr Hughes observed that not only do better systems ensure better customer outcomes, but they enable firms to respond more quickly to changing circumstances. For example, lenders with better data and technology capability, were able to respond more quickly and in a targeted, tailored fashion to borrowers needing additional support this year with loan deferrals.

Mr Hughes said that internal audit also has a role to play in this context. 'Auditors can help elevate the data, help identify risks or problems early, mine the data for good use and influence the design to deliver fit-for-purpose solutions' he said.

Ensuring appropriate consumer safeguards are in place should be a priority for assurance professionals

Mr Hughes said that COVID-19 has 'amplified and increased' consumer vulnerability and in some instances, has reduced people's capacity to engage with 'life administration' including financial decision-making. In this context he said it is especially important for firms to ensure that appropriate safeguards are in place to make it as easy as possible for customers to 'navigate themselves to better outcomes'. Mr Hughes said that in this context, ASIC expects assurance professionals to:

- 'understand customer outcomes, monitor those outcomes and deliver those outcomes;
- design and offer products that deliver value – not surprises – and are sold fairly;
- design ‘choice architecture’ that is fair for customers; and
- tackle head-on complexity in financial services and products that are unnecessary and harmful to customers and, ultimately, a value loss for shareholders'.

Mr Hughes reiterated that ASIC now has the regulatory tools required to take a 'a targeted, outcomes-based and less prescriptive approach to regulation' and that ASIC's expectation is that it we 'will only intervene when the warning signs of harm and misconduct require us to do so' – that is, when industry fails to step in.

> 'While the focus in the current macro-economic environment is primarily addressed at ensuring credit flows quickly and efficiently to borrowers, customers still expect to be treated fairly and for their interests to be placed first'.
>
> [Source: Speech by ASIC Commissioner Sean Hughes to the Financial Services Assurance Forum 26/11/2020]

Stepping up: The Institute of Internal Auditors has issued new guidance to strengthen risk management practices across the financial services sector

Key Takeouts

- The new (voluntary) best practice guide sets out what is expected of internal audit. It's designed to have broad application, lifting standards across the finncial services sector by ensuring that the voice of internal audit is heard and respected within organsiations.
- The guide is organised around six core principles and includes 32 recommendations. Broadly, the guide aims to: a) ensure internal audit has the respect, resources and access necessary to effectively challenge organsiational leaders and executives; b) ensure internal audit teams have the capabilities necessary to perform effectively (including communication skills and data analytics skills); c) safeguard the independence of the internal audit function and ensure its ongoing objectivity and effectiveness is maintained; and d) formalise reporting, accountability and internal systems/protocols to ensure their ongoing effectiveness.
- Monitoring culture: Principle 6 concerns the role of internal audit in auditing risk culture. The guide makes clear (among other things) that internal auditors should be a 'vital source of intelligence for the board' on the organisation's risk culture, given the independence/objectivity of the role within the organisation and that both reporting to regulators and internally to the audit committee, should factor in the 'cultural dimension'.

The Institute of Internal Auditors (IIA) has released a new (voluntary) best practice guide to internal audit in the financial services context, with the aim of lifting standards across the industry.

In her foreword to the guide, IIA Chair Sandra Birkensleigh commented that a key 'policy failure' highlighted by the prudential inquiry into the CBA and evident from other recent events is the fact that the internal audit function was too often able to be ignored. The guidance has been developed to address this issue, and to 'position internal audit for success'.

The guide has been released following industry consultation and with input from the financial regulators and is also consistent with the requirements in the International Professional Practices Framework (IPPF framework) and the International Standards for Professional Practice of Internal Auditing (the Standards).

What's in the guidance?

The guide includes 32 recommendations for audit practice, underpinned by six guiding principles. A high level overview is below.

Principle 1: Position internal audit for success

'The primary purpose of internal audit should be to assist the board and senior management to protect the assets, reputation and sustainability of the organisation'.

Recommendations 1.1-1.5 fall under this principle and are primarily concerned with formalising the role and 'mandate' of independent audit within the organisation and ensuring the independence of the internal audit function.

- Formal internal audit charter: Recommendation 1.1 is that the role of internal audit should be formalised in a publicly availble, interal audit charter setting out the purpose and 'mandate' of internal audit.
  - The guide suggests that the mandate should 'encompass': 'active collaboration with management and the board'; 'proactive challenge of executive management to improve the effectiveness of risk culture, governance, risk management and key internal controls'; 'assessment of whether all significant risks are identified and appropriately reported by management and risk function to the board'; and 'independent determination on whether internal controls are adequate'.
  - It's envisaged that the Audit Committee Chair would have responsibility for approving and providing oversight of compliance with the charter.
- Scope of audit should be unrestricted: Recommendation 1.4 is that 'the scope of internal audit should be unrestricted and organisation-wide'. The guide recommends that as a minimum, internal audit should include: governance, risk structures and processes; risk and control culture of the organisation; risk of poor customer treatment; and key corproate events (eg 'significant business process changes, introduction of new products and services, outsourcing, acquisitions or divestments) within its scope.
- The audit plan should be independently set: Recommendation 1.5 is that 'the audit universe and internal audit plan should be risk-based and independently set by internal audit, based on reasonable consultation with the organisation's stakeholders and subject to the review, challenge, and approval of the Audit Committee'.
- Reporting lines:
  - Recomemndations 1.2 is that the head of internal audit/Chief Audit Executive (CAE) should have a primary reporting line to the Chair of the Audit Committee, and possibly an 'administrative reporting line' to the CEO (or direct report). This recommendation also recommends that the audit committee should have documented responsibility for appointing/removing the CAE (and that this should be formalised in the internal audit charter).
  - Recommendation 1.4 recommends that subsidiary, branch and individual heads of internal audit should report to the group CAE, 'while maintaining recognition of local legislation and regulation'.

Principle 2 – Ensure adequate resourcing and seniority

'The composition, structure and remuneration arrangements of internal audit should support independent and effective assurance'.

Recommendations 2.1 to 2.6 fall under this principle.

- Responsibility for ensuring that internal audit teams have the necessary skills, knowledge and capability to be effective in their roles: Recommendation 2.1 recommends that the CAE 'must be a member of a relevant professional body with an appropriate code of professional conduct and a member disciplinary process' eg Institute of Internal Auditors (IIA) and Chartered Accountants Australia and New Zealand (CA ANZ). The CAE also should have responsibility for ensuring that the internal team is appropriately qualified and has the necessary skills and capability to carry out its role effectively (the recommendaton sets out these requiremnets in some detaill) as well as ensuring a talent management program is in place to attract and retain key internal audit talent.

- **Ensuring adequate resourcing is in place:** To ensure the internal audit team has the necessary resourcing 'to provide effective challenge to the organisation', recommendation 2.2 recommends that the Audit Committee review the adqeuacy of internal audit team resourcing 'at least annually'. The guide envisions that the CAE would provide the Audit Committee with a recommendation on the sufficiency of resourcing to assist in this.
- **Facilitating appropriate challenge to the leadership team/senior management:** Recommendation 2.3 recommends that the CAE should have a level of seniority within the organsition to 'allow appropriate access to information and the authority to challenge the leadership team'. It's further recomemnded that subsidary, branch and indivdiaul heads of internal audit should be 'at a level of seniority comparable to the senor management whose activities they are responsible for auditing'.
- **Chief Audit Executive tenure:** Recommendation 2.4 is concerned with ensuring the ongoing independence of the CAE. It's recommended that the Audit Committee perform an annual assessment of the ongoing independence/objectivity of the CAE, once the CAE's tenure exceeds a predetermined timeframe. The guide does not specify this timeframe, observing that tenure practices vary widely across the industry. Instead it's suggested that organisations should formulate and formalise their own CAE tenure policy and set their own CAE tenure limit.
- **Statement of accountabilities:** Recommendation 2.5 recommends that the internal audit charter and the Audit Committee charter should outline the performance assessment process for the CAE and should ensure that the Audit Committee Chair approves the CAE's performance objectives, provides performance feedback and approves the CAE's performance ratings. The guide comments that many CAEs will be 'accountable persons' under the Banking Executive Accountability Regime (BEAR) or, (once legislated) the Financial Accountability Regime (FAR). The guide states that 'irrespective of whether BEAR or FAR applies, the CAE along with any subsidiary, branch and individual heads of internal audit, should have a clear statement of individual accountability, clearly stating his or her responsibilities'.
- **Internal audit team remuneration/CAE:** Recommendation 2.6 recommends that 'remuneration framework of the CAE and internal audit team should be structured in a manner which avoids conflicts of interest, does not impair independence and objectivity, and is not exclusively linked to the short-term performance of the organisation'. The guide comments that the remuneration framework should be compliant with the current APRA prudential standard/guidelines and that the Chair of the Audit Committee should be responsible for recommending the remuenration of the CAE to the remueneration committee.

Principle 3 – Provide assurance which adds value

'Internal audit should be effective and add value in meeting the assurance needs and expectations of the Board and stakeholders'.

Recommendations 3.1 to 3.6 fall under this principle.

- **Annual declaration:** Recommendation 3.1 is that the CAE should provdie the Audit Committee with an annual declaration attesting to the adequacy of internal audit activities and that 'the internal audit governance structure, annual plan, people model and reporting are appropriate to the organisation, having regard to the assurance needs of the Baord and stakeholders, and the size, busienss mix and compexity of the organistion'. The guide comments that most CAEs already provdie a statement of this kind, and that some also provide an annual statement confirming the fulfilment of their role accountabilities under the BEAR (or in future, the FAR). The guide sets out a number of areas that should be covered in the annual declaration, and suggests that if these are not already covered in existing statements, that a supplementary statement should be prepared.
- **Internal assurance should add value:** Recommendation 3.2 is that 'internal audit should be effective and add value in meeting the assurance needs and expectations of the Board and other relevant stakeholders'. The guide suggests that the ability to 'add value' is underpinned by a clear understanding of board/stakeholder expectations, the 'effectiveness of its relationships', the quality and timliness of its assurance reporting and its 'independent contribution to the overall assessment of the risk and control maturity of the organisation'.
- **The independence of internal audit should be safeguarded:** Recommendation 3.3 is that 'Internal audit's independence as an assurance provider and the objectivity of its work should be safeguarded'. The guide comments that while internal audit 'may provide expert advice on the design of first and second line controls, the function must not take responsibility for their design, implementation or operation'.
- **Recommendations 3.4-3.6 concern internal audit strategy**
  - Internal audit should set a strategy which is approved by the Audit Committee (recommendation 3.4).
  - Internal audit's operational processes should be established and managed in accordance with the approved strategy (recommendation 3.5)

- 'Establish and maintain capability to fulfil the audit strategy and annual internal audit plan' (recommendation 3.6).

Principle 4 – Employ methods and tools appropriate to the task

'Internal audit should maintain an up-to-date methodology and underlying practices, and associated tools, to enhance its effectiveness'.

Recommendations 4.1 to 4.8 fall under this principle.

- Policies/procedures should be well documented, and up to date: Recommendation 4.1 is that internal audit should maintain up to date policies, procedure and performacne and effectiveness measures.
- Continuous risk assessment process: Recommednation 4.2 is that Internal audit should have a 'structured, documented and risk-based continuous risk assessment (CRA) process, which is conducted and concluded upon periodically'. The guide states that this process should identify 'signifidant emerging and changing risks' and key external factors, confirm internal audit's assessment of risk across the business and ensure the audit plan is focusing on material risks for the organsiation.
- Data analytics: Recommendation 4.3 recommends that internal audit should 'consider' using data analytics to assist in the performance of its functions, including implementing training to ensure internal audit staff have the necessary skills to use data analytics effectively.
- Root cause methodology: Recommendation 4.4 is that internal audit should have a 'robust root cause analysis methodology' The guide states that this methodology should include both hard controls (eg roles and responsibilities) and behavioural elements (eg achievability). The methodology should also note whether behaviours are incentivised. Finally, the root cause analysis should assess whether the issue (and root cause) could be relevant to other areas of the organisation. This is expected to 'ensure management action plans addres the root cause of the issues raised and hence result in more sustainable remediation outcomes for the organisation'.
- Lessons learned: Recommendation 4.5 is that internal audit should have a retrospective review/'lessons learned' process in place for when the organisation is subject to significant incidents and regulatory actions.
- Quality assurance process: Recommendation 4.6 is that internal audit should have a quality assurance program in place to ensure that the function operates in line with its stated policies/procedures.
- Reliance on the quality of another assurance provider's work should not be assumed: Recommendation 4.7 is that internal audit should only place place reliance on/'claim audit coverage' on another assurance provider's work once an evaluation of the effectiveness of that work has been undertaken. The guide states that this assessment should be performed 'at least every two years' and include assessment of specific areas. The guide makes clear that this recommendation is 'not applicable to work udnertaken as part of a co-sourcing relationahip where the internal audit function retains 'ownership' of the audit work (including scope and quality/review of workpapers'.
- Regulator external assessments: Recommendation 4.8 is that internal audit 'should be assessed on conformance with the Code of Ethics and the Standards by a qualified independent assessor from outside the organisation at least once every five years'.

Principle 5 – Report to influence positive change

'Internal audit should drive positive change by providing timely, accurate and insightful information to be used as a basis for making risk-focused decisions'.

Recommendations 5,1 to 5.5 fall under this principle.

- Internal audit should provide formal reporting to the Audit Committee and other board committees as appropriate as well as to the leadership team (recommendation 5.1). The guide states that internal audit reporting should be 'formally documented and endorsed by the relevant governing bodies'.
- Types of reporting that should be considered: Recommendation 5.2 lists the types of reporting that internal audit should consider eg board and board committee; leadership team; real time escalation; standard internal audit reports; standard internal audit reports; targeted reviews and thematic reviews (among others).
- Consistent format: Recomemdnation 5.3 recommends that formal internal reporting should always have a 'standard structure' regardless of the forum and format. The commentary accompanying the recommendation outlines the elements that internal audit should consider including 'commensurate with the risk maturity of the organisation'.

- **Reporting protocols:** Recommendation 5.4 sets out the 'minimim' board audit committee reporting and protocols that should be in place.
- **Input into the organisational performance management process:** Recommendation 5.5 outlines how internal audits can contribute to broader performance management processes. The guide states that 'where appropriate, internal audits performed may result in input to the organisational performance management process, including consequence management, with the objective of reinforcing and rewarding appropriate conduct and addressing inappropriate conduct'.

Principle 6 – Adopt appropriate methodologies for auditing risk culture

'As an independent function, internal audit can provide independent assurance on the governance processes around risk culture and reporting, but also an independent view of the risk culture itself. Internal audit provides assurance in relation to risk culture both through "business as usual" audits and broader risk culture audits'.

Recommendations 6.1 and 6.2 fall under this principle.

- **Internal audit should consider the 'cultural dimension'**: Recommendation 6.1 states that 'Since risk culture is a fundamental component of the risk management framework, in its 'business as usual' audits, whether of a business unit, a process or a review of a risk event, IA [internal audit] should consider the (risk) cultural dimension': The recommendation then breaks this down into five parts:
  - 6.1a states: 'Given its independent role in the organisation, IA provides a crucial perspective on the organisation's risk culture'. The commentary enlarges on this suggesting that internal audit is ideally placed to observe everyday busienss culture as well as to investigate risk issues/policy breaches and as such, is a 'vital source of intelligence for the board'.
  - 6.1b states: 'Where the first or second line are performing risk culture assessments, internal audit should challenge these assessments as necessary'. The commentary accompanying the recommendation emphasises that internal audit should report inconsistencies bewteen assessments and challenge both methologies used and conclusions drawn as/when necessary.
  - 6.1c states: 'Internal audit should use a variety of techniques to produce risk culture insights in its audit activities'. The commentary accompanying this recomemndation lists a number of techniques that could be employed including (among others) interviews and focus groups; observation of behaviours including in meetings; and anonymous staff surveys.
  - 6.1d states: 'These risk culture insights should be presented in audit reports where relevant, including, for APRA-regulated entities, the annual review of the risk management framework'.
  - 6.1e states :'Risk culture insights should be reported to management and the Audit Committee on a regular basis'. The commentary accompanying 6.1d and 6.1e states that 'Every audit report, whether of a business, a process or a review of a risk event, is an opportunity for internal audit to provide vital risk culture insights. A discussion of risk culture should be included in reports wherever relevant'. The guide comments that for APRA-regulated financial institutions, annual reviews of the effectiveness of the organisation's risk management framework (consistent with CPS220) should include an overview of internal audit's findings on risk culture.
- **Internal audits of the risk culture framework:** Recommendation 6.2 states that 'Internal audit should conduct audits of the risk culture framework on a cyclical basis consistent with the risk appetite of the organisation, or sooner if circumstances change substantially or if a self-assessment is requested by the regulator'. The recommendation specifies that an audit of the risk culture framework should assess: the framework and process for setting the desired risk culture from the board and the way this has been communicated throughout the organsition; and the policies/procedures in place within the organisation to ensure alignment with favourable risk culture.

[Source: Institute of Internal Auditors Australia report: OnRisk 2021: A Guide to Understanding, Aligning, and Optimizing Risk]

Trends in the evolution of the risk profession: Insights from the Governance Institute

Key Takeouts

- There is general acceptance (77%) that the risk management function will grow in importance over the next five years mostly due to heavier and more complex compliance requirements and the impact of COVID-19. Despite this, resourcing remains an issue in many organisations.
- The role of risk manager is expanding and becoming increasingly strategic as well as technical in focus, requiring an ever expanding range of skills/expertise. The report suggests that this may lead to a split in the role in future (ie a split into a more strategic senior role, supported by more junior technical roles).
- The shift towards data-driven decision making, the increasingly important role of technology and the need for professionals to have strong emotional intelligence/communication skills are among the key drivers of change in the risk profession.

The Governance Institute has released a report - The Future of the risk management professional - exploring the current state of the risk profession and likely evolution of the risk profession and the factors driving the change. The report also touches on how risk professionals can best equip themselves to face future challenges.

The report is based on roundtable discussion, interviews with industry experts and a survey of 350 risk management and government professionals, non-executive directors, CEOs and other C suite executives across a range of industries.

Some Interesting Findings

Current landscape

- **Most organisations (72%) have a dedicated risk management function** and a further 11% indicated that their organsiation intends to introduce one. Larger organisations are more likely than smaller organisations to have an internal risk function. 17% of respondents indicated tha their organsiation has no internal risk management function and no plans to introduce one.
- **Board repsentation?** Only one in five respondents indicated that there is a risk specialist in the boardroom, though 52% of respondents indicated that risk is represented in the C-suite. The report suggests that this may reflect the evolution of the risk management role over time, with many professionals taking on risk in addition to their other responsibilities, rather tha focussing solely on risk.
- **A gap bewteen the perceived importance of risk and willingness to ensure adequate resourcing is in place?**
  - Only 9% of survey respondents believe that the risk function is not very important (8%) or not important at all (1%). In contrast 38% of respondents view it as essential, and 55% viewed it as important/quite important.
  - Despite this, almost half (47%) of respondents said their risk management team does not have the resources it needs to do its job effectively and 30% of survey respondents said that the risk function within their organisations is not very well resourced.

The impact of COVID-19

- **COVID-19 has seen an increase in demand for risk management and in particular stress testing**. COVID-19 has also precipitated an increased focus on operational risk (eg employee wellbeing and social impact).
- **Level of preparedness for the impact of the pandemic**: In terms of preparedness for the impact of COVID-19, only 8% of respondents indeicated that they were very well prrepared, 34% said that they were adequately prepared and almost half of respondents (46%) of respondents indicated that they were only partially prepared. Over one in ten respondents were not at all prepared for the impact of COVID-19.

Evolution of risk within organisations

- **The voice of risk will increase in volume:** 77% of respondents believe that the risk management function will grow in importance over the next five years mostly due to heavier and more complex compliance requirements and the impact of COVID-19.
- **The likely evolution of risk manager role?**

- The report found that the role of risk managers is expanding, becoming both more strategic in focus and more senior within organisations and that this trend is expected to continue . Most survey respondents see an increased need for future risk managers to have strong communication/influencing skills – eg the ability to 'think outside the box' (81%), communication skills (80%) – as well as technical expertise.
- The report suggests that going forward, this 'could result in a new breed of risk superheroes emerging, who are equally comfortable crunching data as they are presenting in the boardroom'. Or, more realistically, to result in the role being split into more senior strategic roles, supported by more technical roles with those taking on the strategic aspects of the role working at senior/executive level. One suggestion put forward by a roundtable participant is that the risk profession should aspire, over the next five or ten years, to follow the same trajectory as the finance function within organisations, with a permanent and respected voice in the boardroom akin to the CFO in the finance context

- A need for risk to be understood across the organisation: The rerport highlights the need for risk to be understood outside the legal and audit departments across all levels of the organiation, and more particularly to be integrated into decision making at all levels. The report flags the improtant role that risk professionals will play as 'educators' in this context, again underlining the need for strong communication/influencing skills.

- Risk professionals as facilitators of innovation (not barriers to it): The report also flags the important role risk managers will play in supporting innovation and assisting to identify and take advantage of opportunities, and the challenges of overcoming the perception that they are a barrier to change. Rountable participants emphasised the improtance of having positive mindset and, again strong communication and influencing skills to ensure that the board/decision maker is not only hearing a negative message. 'Risk management should not just be about stopping bad things happening; it should also be about facilitating good things happening' the report states.

Drivers of change in the profession?

- In the shorter term (2025), survey respondents nominated business the The report expresses concern that survey respondents did not rank either crisis management (15%) or supply chain failure (6%) more highly, on the basis that it may indicte that the lessons learnt from the pandemic 'may not be as long lasting as we would hope'.

- Looking further forward to 2030, climate change (38%), artificial intelligence (AI) (37%) and cybersecurity (35%) are considered to be the top three key drivers.
  - The future impact of climate change is expected, like COVID-19 has done in 2020, to test organisations' post-pandemic business continuity plans. This underlines the improtance of applying the lessons from COVID-19 to business continuity plans to ensure organisationsa re in the strongest possible position to face future challenges.
  - Artificial intelligence: 84% of survey respondents belive that AI and machine learning will take over routine tasks within the risk management function, 72% of respondents viewed this as positive from the perspective that it will make the professional more interesting/high level. However, 74% are of the view that this will also lead to job losses in the more administrative areas of the profession.
- Other drivers of change: The report also identifies several 'broader drivers' of change including:
  - The shift towards data-driven decision making (and the consequent need for risk professionals to have strong skills in this area)
  - The increasingly important role of technology within organisations more broadly (and the need for risk professionals to have the necessary cyber skills)
  - The need for risk professionals to have strong emotional intelligence/communication skills to ensure the voice of risk is heard within the broader organsiation and heard and respected within the boardroom.

Level of preparation for future shocks

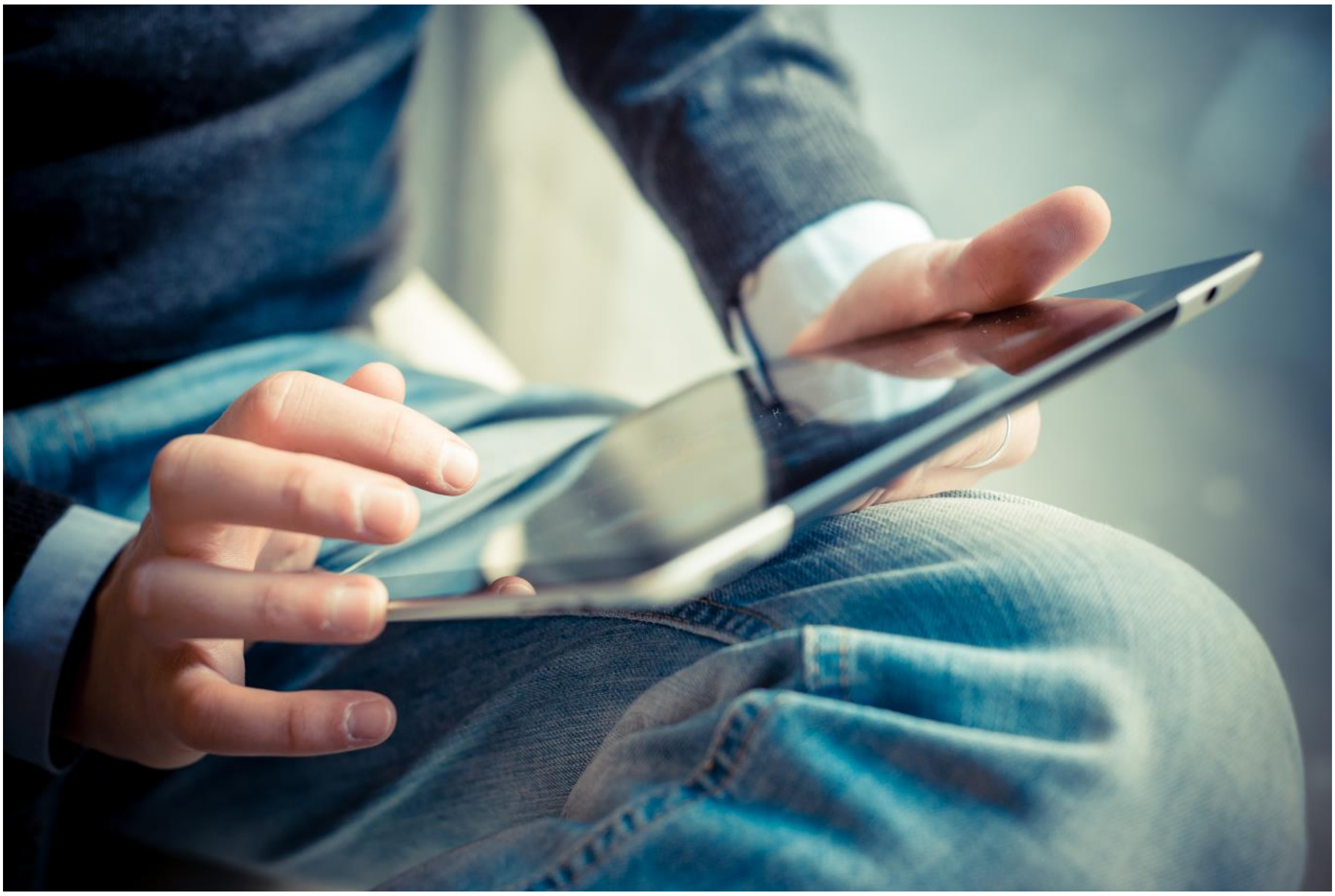
- Risk professionals are cautious about their preparedness for future shocks: According to the report most risk professionals do not feel well/very well prepared to meet future challenges in risk management - only 30% of survey respondents feel they are well prepeared/very well prepared. 45% indicated that they feel 'slightly prepared' and and 25% feel either not very well prepared (20%) or poorly prepared (5%). Similarly only 30% of respondents think that future generations of risk professionals will be well prepared to face new challenges, and 25% think they will not be well prepared.

Time to formalise risk management as a career path?

- The report suggest that in light of the direction of evolution of the role of risk mangement within organisations, and in light of the report findings, that it may be time to consider formalising risk training and making risk management a career path in its own right. This could include not only entry level qualifications but ongoing support in the form of CPD to assist risk professionals in keeping their skills/knowledge current.

[Sources: Governance Institute media release 01/12/2020; Governance Institute Report: Future of the risk management professional]

Privacy, Technology and Cybersecurity



Top Story | Cybersecurity must be a top priority: APRA puts firms on notice

Key Takeouts

- The Australian Prudential Regulation Authority (APRA) is set to step up its focus on cybersecurity and more particularly it's focus on ensuring full compliance with prudential standard CPS 234 Information Security
- APRA will be asking boards to engage an external auditor to review their organisation's compliance with CPS 234 and report back to the regulator and to the board on the results in 2021.
- APRA Executive member Geoff Summerhayes cautioned that where compliance issues are not addressed with sufficient speed, APRA will consider taking formal enforcement action.

In his address to the Financial Services Assurance Forum, APRA Executive member Geoff Summerhayes outlined the key points of APRA's new Cyber Security Strategy for 2020 to 2024. In doing so, Mr Summerhayes emphasised APRA's expectation that firms prioritise cybersecurity, starting with ensuring their full compliance with CPS 234.

Cyber risk is a growing threat

- **The threat that cyber risk poses is accelerating:** Mr Summerhayes said that though no APRA-regulated entity has yet been targeted by a 'material cyber breach', the regulator remains of the view that 'it's only a matter of time until a major incident occurs'.
- **Industry has not done enough to counter the threat:** Though firms have taken some steps, APRA considers that the way in which the financial services industry manages cyber risk could be improved. In particular, Mr

Summerhayes flagged both board oversight of cyber risk; and the effectiveness of internal audit functions as two areas in need of improvement.

- **Changes in work practices have also left firms vulnerable:** Mr Summerhayes also observed that the rapid shift to working from home arrangements as a result of the COVID-19 pandemic, has meant that many firms have 'needed to make compromises' in order to maintain business continuity. However, he observed that few have since 'gone back to firmly close the gates they left ajar in March'. Mr Summerhayes said that thought these 'risk trade-offs' were understandable in the circumstances, it is an area where APRA can 'no longer hold off tightening the regulatory screws' especially in light of the evidence of poor compliance with CPS234.

APRA's new Cybersecurity Strategy for 2020-24

Mr Summerhayes briefly described the key points in APRA's new cybersecurity strategy, which he described as a 'step change in regulatory intervention'.

Broadly, Mr Summerhayes said that APRA will tighten accountability for failure to comply with CPS 234 through:

- increased scrutiny of board cyber oversight practices
- the release of 'enhanced cyber guidance for board members, internal auditors and risk management professionals'. The new guidance will be developed in partnership with relevant professional bodies (the Australian Institute of Company Directors, the Risk Management Institute of Australasia, the Institute of Internal Auditors)
- The use of a 'broader set of regulatory tools and techniques' to impose 'greater accountability on entities that fail to adequately comply with their prudential obligations.

APRA will also look to strengthen third party provider assessment and assurances practices. Mr Summerhayes said that the new strategy will 'extend APRA's reach beyond our regulated entities to influence the broader eco-system of suppliers and providers they rely upon'.

External reviews of CPS 234 compliance, APRA will consider taking formal enforcement action where non-compliance is not addressed with sufficient speed

Mr Summerhayes said that the regulator will,

> … 'shortly be requesting one-off tripartite independent cyber security reviews across all our regulated industries. Starting next year, APRA will be asking boards to engage an external audit firm to conduct a thorough review of their CPS 234 compliance and report back to both APRA and the board. We haven't made a final determination on which entities this will apply to, but all entities should prepare accordingly'.

Mr Summerhayes said that the purpose of the exercise is to identify compliance issues and ensure they are rectified as quickly as possible and also about 'sending a message' about the seriousness of the issue and the need for greater accountability.

> 'In light of evidence that boards frequently don't understand or are not adequately informed about cyber risks, we're no longer prepared to simply take their words for it – we want compliance independently verified, and we will be applying serious pressure when it's not forthcoming. Where gaps are sufficiently material, we will consider forcing entities to issue a breach notice and create a rectification plan. If boards are unwilling or unable to make the required changes in a timely manner, we will consider using formal enforcement action. The intention, as per our "constructively tough" enforcement philosophy, it is to expedite positive change to protect institutions, the customers that rely on them and the broader financial system'.
>
> [Source: APRA Executive Board Member Geoff Summerhayes - speech to Financial Services Assurance Forum 26/11/2020]

In Brief | Key challenges for smaller ADIs and mutuals: In his address to the COBA Convention, APRA Deputy Chair John Lonsdale flagged cybersecurity and in particular, managing the risks associated with third party arrangements and separately, recovery planning as two areas where the regulator considers improvement is needed

> [Source: Deputy Chair John Lonsdale, speech to Customer Owned Banking Association (COBA) 2020 Convention 02/12/2020]

Unconscionable conduct: Telco to pay $50m in penalties to settle proceedings for unfair sales tactics

The Australian Competition and Consumer Commission (ACCC) and Telstra have announced that they have reached an agreement to settle proceedings concerning admitted historical unconscionable sales practices.

- As part of the settlement, Telstra has admitted that staff at five licensed Telstra-branded stores acted unconscionably by using unfair sales tactics to sign up 108 Indigenous consumers to multiple post-paid mobile contracts between January 2016 to August 2018.
- Many of these consumers did not speak English as a first language, did not understand Telstra's written contracts and were unemployed/reliant on government benefits or pensions as the primary source of their income at the time they entered into the contracts.
- In some instances, consumers were not provided by sales staff with a full explanation of the contract terms, with staff representing that consumers were receiving products for 'free'. In some instances staff also manipulated credit assessments to falsely indicate that consumers were employed.
- Many of the affected consumers suffered personal financial hardship/distress as a result of these practices. The average debt per consumer was more than $7400.
- Telstra's board and senior executives were unaware of the improper sales practices when they occurred.

Telstra has agreed to pay $50 million in penalties. The Federal Court will decide if this is appropriate.

In addition, the Australian Competition and Consumer Commission (ACCC) has accepted a court-enforceable undertaking from Telstra in which the company undertakes to remediate affected consumers, strengthen its compliance program, expand its Indigenous telephone hotline and enhance its digital literacy program for consumers in certain remote areas.

Telstra's response

In a statement, Telstra CEO Andrew Penn again apologised for the conduct and the impact it has had on affected consumers and outlined the steps Telstra has taken already to address the issue and ensure there is no recurrence.

Mr Penn said Telstra was committed to improving the experience for all customers. He said,

> 'Being a responsible business and doing what is right for customers and the community is a non-negotiable for Telstra, but we do not always get it right. We need to acknowledge when that happens, and today is unfortunately one of those times. Disappointingly these customers did not receive the standard of care or service they should expect from us, and we did not then act quickly enough to fix the issues once they became known',,,
>
> …'We have been working hard to ensure that our actions, processes and practices reflect our purpose and our values, so that we minimise the potential for such sales practices re-occurring and having such a significant impact on a vulnerable part of our community.is the core of the company's strategy'.

Financial Counselling Australia has welcomed the announcement

In a statement, Financial Counselling Australia (FCA) welcomed the announcement and the work being undertaken by Telstra to assist those impacted. The statement also emphasises the important role that financial counsellors have played in reaching this point and the role that counsellors continue to play in assisting vulnerable customers, especially in remote communities.

[Sources: ACCC media release 26/11/2020; Telstra media release 26/11/2020; Financial Counselling Australia media release 26/11/2020]

Other News

COVID-19: The Treasurer has welcomed the lower uptake of JobKeeper support as a sign of a stronger than anticipated recovery

In a statement, Treasurer Josh Frydenberg pointed to the lower uptake of JobKeeper support in October (as compared with September) and to the Reserve Bank of Australia's (RBA's) revised forecast unemployment rates as positive indications that the COVID-19 economic recovery is proceeding more quickly than anticipated.

Mr Frydenberg said that:

- preliminary data indicates that around 450,000 fewer businesses and around 2 million fewer employees qualified for JobKeeper in October than in September. This is down on 2020-21 Budget forecase.
- the RBA's revised forecast for the unemployment rate, is now expected to be peak at approximately 8% (down from 10%). The effective unemployment rate decreased from 9.3% in September to 7.4% in October, with around 80%of those who lost their job or stood down on zero hours now back at work.
- As restrictions have eased in Victoria, the effective unemployment rate has fallen from 14% to 10.5%

Mr Frydenberg commented,

> 'While there is still a long road ahead, these are promising signs that our economic recovery is well underway'.
>
> [Source: Treasurer Josh Frydenberg media release 30/11/2020]

In Brief | Submissions for the 2021-22 Federal Budget are now open. The due date is 29 January 2021

> [Sources: Assistant Minister Michael Sukkar media release 27/11/2020; Treasury pre-budget submissions: 2021-22 Federal Budget]

Contacts

Mark Standen
Partner

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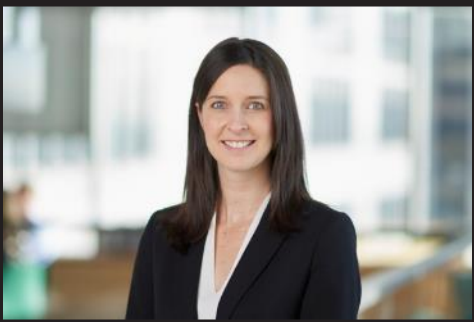
mark.standen@minterellison.com
T +61 2 9921 4902 | **M** +61 412 104 902



Siobhan Doherty
Partner

—

siobhan.doherty@minterellison.com
T +61 2 9921 4339 | **M** +61 413 187 544

Kate Hilder
Consultant

—

kate.hilder@minterellison.com
T +61 2 9921 8785