Governance News

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Mark Standen
Partner
Email Mark

T +61 2 9921 4902 | M +61 412 104 902

Siobhan Doherty
Partner
Email Siobhan

T +61 2 9921 4339 | M +61 413 187 544

Kate Hilder
Consultant
Email Kate

T +61 2 9921 8785 |

For queries or to subscribe/unsubscribe to Governance News updates, please contact: kate.hilder@minterellison.com

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United Kingdom | Board ethnicity targets are still within reach but more work needs to occur if they are to be met: The latest Parker Review into the diversity of FTSE 350 boards reveals 59% do not include at least one director of colour

Report Overview | 2020 Parker Review

The latest update of Sir John Parker's report into the ethnic diversity of FTSE 350 boards reports on the progress boards are making towards meeting the (voluntary) government backed diversity targets set by the Parker Review. The targets are as follows:

- by the end of 2021, FTSE 100 boards will include at least one director of colour.
- by the end of 2024, FTSE 250 boards will include at least one director of colour.

Key Takeout? The headline finding is the continuing lack of diversity in leadership: 59% of FTSE 350 boards do not include at least one director of colour.

Commenting on the findings, Sir John Parker emphasised the value of diversity and the imperative to increase diversity in the leadership of the nation's largest companies. 'I sincerely believe that, at a time when the UK needs business to make a crucial contribution, and when public confidence in the market economy is at best fragile, attaining our goal of “One by 21” is more than socially desirable. It is an essential element in our country’s economic future, and the esteem in which our companies are held around the world. We can and must act without further delay.

Commenting on the slow rate of progress he said that though 'it might seem that we are way off course' in terms of meeting the targets set, he believes that with commitment the targets are still within reach. Doing so, he said would require action rather than words for example in ensuring pathways to progression are open.

In particular, Sir John called for Chairs and Chairs of nomination committees to be 'more assertive' in pushing for change. Sir John suggests that 'refusing to accept the head-hunter’s excuse that “the candidates just aren’t there”' is one way they can do this, observing that when faced with this issue 'my next step is to find better consultants who can find the talent either at home or in our world of 7.7 billion people.'

Some Key Findings

- **59% of FTSE 350 boards overall have not yet met the target** of including at least one director of colour
- **Only 38 FTSE 350 companies have more than one director of colour**
- **Across the FTSE 350 there are only 15 directors of colour who occupy positions of Chair or CEO**
- **The smaller the company the less ethnically diverse the board:** Overall, the report found that FTSE 250 companies were less diverse than their larger counterparts with 69% of FTSE 250 companies failing to meet the target compared with 37% in the FTSE 100
- **There is a concentration of directors of colour in a small number of companies**. Eight companies account for nearly 25% of the directors of colour. These eight companies include mining companies owned/founded in Central and Southern America and commercial institutions with roots in Asia and Africa.

- **Signs of progress?** 52 of 83 respondent FTSE 100 companies (63%) have met the target, and 31 of 83 respondent companies (37%) have not yet met the target. This compares to 54 of 100 companies (54%) not meeting the target in 2018, and 51 of 100 companies (51%) not meeting the target in 2017.

- **Across the FTSE 350, 43% of director positions are held by women,** comprising 42% of director of colour positions in the FTSE 100 and 45% of director of colour positions in the FTSE 250

'Unsatisfactory'? There room to improve diversity reporting

The report also includes research undertaken by the Cranfield School of Management (on behalf of the Financial Reporting Council) into the current extent and manner of reporting by FTSE 100 and FTSE 250 companies on ethnic diversity at board and senior management levels. The analysis is based on disclosure in 2019 annual reports.

Some Key Points

- **Overall, the report found that the quality of board diversity policy reporting improved.** For example there was greater focus on ethnicity. However, the report comments that gender remains the predominant lens through which 'diversity' is reported.

- **Room for improvement?**

  - **3% of the FTSE 100 and 11% of the FTSE 250 do not have a policy on board diversity**

  - **31% of board diversity policies at FTSE 100 companies do not specifically mention ethnic diversity** (down from 67% in 2018)

  - **52% of board diversity policies at FTSE 250 companies do not specifically mention ethnic diversity** (down from 70% in 2018).

- **Reporting on monitoring of ethnic diversity has increased in the FTSE 100 but not the FTSE 250:** Though 14% of FTSE 100 companies set board ethnic diversity targets (up from 4% in 2018), only 2% of FTSE 250 companies do so (no improvement on 2018). No FTSE 350 company reports on progress against ethnicity targets which is less that in 2018 when 3% of FTSE 100 companies reported against them.

- **Specific reference to ethnicity diversity in reporting on succession planning has increased in the FTSE 100 and FTSE 250 since 2018.** However, references to broader diversity, including diversity of skills, were more prevalent in companies' reporting of succession planning compared to specific references to ethnicity.

- **There was an uptick in the number of diversity initiatives reported, but they're not specifically aimed at increasing ethnic diversity in senior management:** More diversity initiatives aimed at increasing ethnic representation through the pipeline are being reported. However, the number of stated initiatives is still modest and most are primarily focused on general progression rather than specifically increasing ethnic diversity in senior management. The report suggests that the initiatives are therefore unlikely to increase ethnic diversity in senior management in the short term.

- **Complacency?** Many companies acknowledge the Parker Review recommendation without commitment to implementing an objective to increase board ethnic diversity. Some companies report meeting or surpassing the Parker Review target but do not set this as an ongoing measurable objective.

- **Suggested improvements?** The report identifies a number of improvements that could strengthen reporting and progress towards ethnic diversity targets. These include: a) use of clearer and less 'ambiguous' language when referring to race and/or ethnicity; b) focus on ethnic diversity at the board level and in the pipeline; c) underlining the board's position that diversity is good for performance by including diversity in board evaluation; and d) recognising that merit 'is not the opposite of diversity' and addressing the associated unconscious bias.

The FRC expects more

Commenting on these findings, Financial Reporting Council CEO Sir Jon Thompson said that 'the FRC expects to see better quality commentary on all aspects of diversity in future reports'.

He added, 'the UK's record on boardroom ethnicity is poor. It is unacceptable that talented people are being excluded from succession and leadership simply because companies are failing to put in place appropriate policies on boardroom ethnicity, are not setting targets or are not monitoring their progress against policies. A more diverse boardroom leads to better business outcomes, which is why the UK Corporate Governance Code, and now the UK Stewardship Code, requires companies and investors to promote diversity and inclusion. We will monitor closely how companies report on their policies or explain their lack of progress, in this area'.

[Sources: 2020 Parker Review 2020; FRC media release 05/02/2020; [registration required] The WSJ 04/02/2020; 10/02/2020]

In Brief | The UK BEIS has announced that the Hampton-Alexander review target of 33% of all FTSE 100 board members to be women has been met almost one ear early but cautions further work needs to be done for FTSE 250 boards to meet the 30% target (as the proportion of female directors is currently at 29.5%)

[Source: BEIS media release 08/02/2020]

Shareholder Activism

Lazard's annual review of global trends in shareholder activism released: for the first time, Japan was the most-targeted non-US jurisdiction

Lazard Ltd has released its 2019 Review of Shareholder Activism report, which tracks key trends in shareholder activism globally.

Some Key Points

- **According to the report, activist activity decreased 17% on 2018's 'record pace'** with 187 companies targeted (down from 226 companies in 2018). Lazard comments that this is in line with historical levels of activity. The level of capital deployed by activists (~$42bn) reflected a similar dip relative to the ~$60bn+ level of 2017/2018
- **Activism is a global phenomenon**
  - US companies remain the most targeted (~60%) by activists.
  - Activism against non-US targets accounted for ~40% of both campaigns and capital deployed in 2019.
    - For the first time, Japan was the most-targeted non-US jurisdiction, with 19 campaigns and $4.5bn in capital deployed in 2019 (both local records).
    - Europe was the next most-targeted non-US jurisdiction, though overall European activity decreased in 2019 (48 campaigns, down from a record 57 in 2018). The decline was driven primarily by 10 fewer campaigns in the UK. However, expanded activity in

continental Europe —particularly France, Germany and Switzerland — partially offset this decline.

- **A record number of investors (147) launched new campaigns in 2019,** including 43 'first timers' with no prior activism history.
- **Elliott and Starboard remained the leading activists**, accounting for more than 10% of global campaign activity. 80% of Elliott's 2019 capital deployed was concentrated in four campaigns (AT&T, SAP, eBay and Marathon).
- **47% of campaigns launched in 2019 were M&A-driven** with 35% pushing to sell the company, 33% seeking breakup/divesture and 32% pushing to scuttle/sweeten an existing deal. The $24.1bn of capital deployed in M&A-related campaigns in 2019 represented ~60% of total capital deployed.
- **Board seats:**
  - The majority of the 122 board seats won by activists were secured via negotiated settlements (~85% of Board seats).
  - 20% of activist Board seats went to female directors, compared to a rate of 46% for all new S&P 500 director appointees.
  - Activists nominated a record 20 'long slates' seeking to replace a majority of directors in 2019, securing seats in two-thirds (67%) of the situations that have been resolved.
- **ESG focus continues to grow:** Over the past two years, the AUM represented by signatories to the UN's Principles for Responsible Investment increased ~26% to ~$86tn, and the number of assets in ESG-related ETFs increased ~300%.

[Source: Lazard report: 2019 Review of Shareholder Activism January 2020]

Related News: The rise of shareholder activism in Japan? The WSJ writes that the shift in attitudes to investor activism in Japan over the past few years is benefitting activist campaigns, which are both more commonplace, and increasingly successful. The change in attitude is attributed by the WSJ in large part to the Japanese government's corporate governance reforms (eg changes to the stewardship code) which are credited with both pushing investors to take a more active role in monitoring the companies in which they invest and with encouraging outside investment (and to an extent, foreign activist activity).

According to The WSJ, foreign investors report that the view that the attitude of senior executives towards engagement has undergone a shift. A strategy of active engagement is increasingly the norm. Where previously they had to seek out meetings and press their proposals on a reluctant audience, executives are now the ones seeking out meetings with activists, with the goal of anticipating demands and getting ahead of them.

[Source: [registration required] The WSJ 10/02/2020]

A shareholder climate resolution (coordinated by Market Forces) is set to be heard at the upcoming Rio Tinto AGM

Key Takeouts

- A shareholder requisitioned climate resolution, coordinated by Market Forces, is set to be considered at the Rio Tinto 7 May AGM.
- The resolution calls on the company to set and disclose Scope 3 emissions targets and to report on performance against the targets in annual reports going forward.

Details: Two shareholder requisitioned resolutions (coordinated by Market Forces) will be heard at Rio Tinto's upcoming AGM.

- **Special resolution: seeking an amendment to the constitution**

  The resolution seeks to enable shareholders to file ordinary resolutions requesting information/expressing an opinion at AGMs. It's proposed that the resolution would be advisory only and not binding on the directors or the company.

- **Ordinary resolution: Set and disclose Scope 3 emissions targets/performance against the targets**

  The second ordinary resolution will only be put to the meeting, if the special resolution is passed.

  The resolution calls on the company to disclose short, medium and long-term targets for its scope 3 greenhouse gas emissions (Targets) and its performance against the Targets, consistent with the guidance of the Task Force on Climate-related Financial Disclosures (TCFD), in annual reports. The resolution also seeks that the targets set, 'reflect decarbonisation pathways for the company's products' in line with the goals of the Paris Agreement.

Other climate resolutions

Separately, Market Forces is also calling for shareholders to support two separate climate-related resolutions targeting QBE and Suncorp. Broadly, the resolutions call on each of the companies to align their businesses with the goals of the Paris Agreement.

Each resolution is structured in the same way: a special resolution (constitutional amendment to allow for ordinary resolutions to be lodged by shareholders) and a separate ordinary resolution requesting Paris-aligned transition planning. Subject to receiving sufficient support, the resolutions will be lodged at the respective companies.

Details

- **QBE: Set and disclose targets to reduce investment and underwriting exposure to oil and gas assets/performance against the targets**

  The resolution calls for QBE to set and disclose short, medium and long term targets to reduce investment and underwiring exposure to oil and gas asserts and plans/progress to achieve the targets set. Further, the resolution calls for the targets to be consistent with the goals of the Paris Agreement.

- **Suncorp: Set and disclose targets to reduce investment and underwriting exposure to oil and gas assets/performance against the targets**

  The resolution calls for Suncorp to set and disclose short, medium and long term targets to reduce investment and underwiring exposure to oil and gas asserts and plans/progress to achieve the targets set. Further, the resolution calls for the targets to be consistent with the goals of the Paris Agreement.

[Sources: Market Forces resolutions; ASX Announcement 7/02/2020; [registration required] 09/02/2020]

Meeting and Proxy Advisers

United Kingdom | Analysis of FTSE 350 voting patterns has revealed that executive remuneration and director elections/re-elections are the two issues that attracted the highest levels of shareholder dissent in 2019

Report overview | PLSA AGM Voting Review January 2020

Key Takeouts

- The Pensions and Lifetime Savings Association (PLSA) AGM Voting Review analyses the results and key themes of the 2019 voting season, focusing on resolutions attracting significant dissent levels across the FTSE 350.
- The report found that over one fifth of companies experienced significant dissent (over 20%) on at least one resolution at their 2019 AGM, with executive remuneration and directors' elections continuing to attract the highest levels of shareholder dissent.
- Announcing the release of the report, Caroline Escott, Policy Lead: Investment & Stewardship, PLSA encouraged pension funds to engage with companies on issues of concern and to make use of the full range of tools available. However, where engagement fails, 'we would also urge scheme investors to use the 2020 AGM season to hold directors individually accountable on issues of continued concern – doing so can be a powerful tool to effect change'.

The Pensions and lifetime savings association 2019 AGM Voting Review analyses the results and key themes of the 2019 voting season, focusing on resolutions attracting significant dissent levels across the FTSE 350.

Some Key Points

- **Levels of dissent are about the same as 2018:** There were 148 AGM resolutions at 81 FTSE 350 companies that attracted dissent levels of over 20%. This is in line with 2018 findings. In both the FTSE 250 and FTSE 100, roughly one quarter of companies experienced significant dissent over at least one resolution at their AGM in 2019. The FTSE 250 saw a slightly higher concentration of dissent (more affected resolutions at fewer companies).
- **Executive remuneration remains one of the largest sources of shareholder dissent**
    - The average dissent for remuneration policy in 2019 increased significantly to 11.26% (up from 2.89% in 2018), with five companies in the FTSE 100 experiencing significant dissent.
    - The average dissent for remuneration reports fell to 8.33% (down from 8.95% in 2018) with shareholders expressing significant dissent at nine companies.
    - The average dissent over the re-election of the committee chair increased in 2019 to 4.47% (from 3.17% in 2018) but still remains at a lower level to dissent for the policy and report. The PLSA comments that voting against the committee chair when voting against the policy or report, while nearly doubling since 2013, remains uncommon.
    - 18 companies received repeated dissents for their resolutions in 2019. Of this group, ten companies experienced significant dissent for their remuneration reports for three years in a row.
- **Director elections/re-elections are the resolutions most likely to attract shareholder dissent** (after executive remuneration). Over the course of the 2019 AGM season there were a total 58 resolutions

attracting significant dissent over directors' elections in the FTSE 350. The report comments that 'the vote on the directors' election affords shareholders a useful outlet for voicing particular concerns about the company in question and a potential sanction where engagement has failed to deliver the necessary improvements'. In 2019, the report suggests that board diversity was of particular concern for shareholders.

- **No uptick in dissent over audit-related resolutions?** Despite increasing media and policy making concern, PLSA found that levels of shareholder dissent over audit related resolutions in 2019 remained consistent with previous years.

- **Climate resolutions:** According to the report, the introduction of new climate change disclosure regulations last year, has led to an enhanced focus from pension scheme investors on integrating ESG and climate issues into investment/stewardship strategies, despite the relatively low numbers of climate-related shareholder resolutions. For example, the levels of support for shareholder requisitioned climate resolutions at BP and separately at BHP. The report recommends that pension schemes seek to work with their managers and advisers to 'take an engaged, long-term approach' to climate risk and opportunity when considering how to vote at AGMs going forward.

- **Engagement on workforce issues:** The report recommends that pension schemes should be 'more active stewards' of companies that fail to 'communicate the link between their employment models and practices, and their wider strategy and purpose' on the basis that the companies' workforces and working practices are 'crucial' to their long-term success.

- **Where engagement fails?** The report advocates engaging with companies directly on issues ahead of/in between the AGM process. However, the report also suggests that 'where engagement with companies… on areas of concern fail to bring about improvements, we would advise investors to use their vote on directors' re-elections to hasten progress'.

Pension funds have a role to play

Announcing the release of the report, Caroline Escott, Policy Lead: Investment & Stewardship, PLSA, said: 'As long-term investors, pension funds are ideally placed to encourage companies to behave in a way that ensures sustainable business success. We would also urge scheme investors to use the 2020 AGM season to hold Directors individually accountable on issues of continued concern – doing so can be a powerful tool to effect change. For instance, in cases where schemes feel that the agreed executive pay packages are not aligned to long-term performance, we recommend that pension fund investors vote against the re-election of remuneration committee chairs responsible for pay practices alongside voting against the remuneration policy or report'.

Ms Escott added 'it is important to remember that voting is only one way for schemes to engage and make their views known on issues of concern. We would encourage pension schemes to consider how to best make use of the full array of engagement tools, including seeking additional meetings with company management, or collective engagement with other investors.'

[Sources: PLSA media release 22/01/2020; PLSA 2019 AGM Voting review]

Disclosure and Reporting

Report Overview | Governance Institute guide, Climate change risk disclosure: A practice guide to reporting against ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, February 2020

Key Takeouts

- The Governance Institute of Australia (GIA) has released a guide to assist ASX-listed entities and others, to report against Recommendation 7.4 (material exposure to environmental or social risks) of the ASX Corporate Governance Council's Principles and Recommendations (Principles and Recommendations).
- The guidance focuses on climate-change risk and includes practical steps entities can take to report in accordance with the Task Force on Climate-related Financial Disclosures (TCFD) Recommendations.
- The guide also explains why it is so important for organisations to understand how climate risk affects their business and the drivers behind the push towards enhanced climate risk reporting.
- In his foreword to the report, APRA Executive Board Member Geoff Summerhayes said that 'APRA continues to collaborate with local and international regulators in our multi-stakeholder engagements to urge APRA-regulated entities and the wider businesses community to consider climate change as a core financial risk that must be identified, managed and disclosed'. Mr Summerhayes said that the guide, 'is a valuable tool that will support ASX-listed entities and others in their management and public disclosure of climate risks'.

Context: Reporting under the ASX Corporate Governance Principles and Recommendations

Recommendation 7.4 of the ASX Corporate Governance Council's Principles encourages entities to consider and to report upon any material exposure to environmental or social risks (including climate change risk) and how it manages/intends to manage those risks.

The commentary accompanying the recommendation explicitly identifies risks associated with the following as particular sources of climate risk: a) risks related to the transition to a lower-carbon economy, including policy and legal risks, technology risk, market risk and reputation risk; and b) physical risks, such as changes in water availability, sourcing, and quality; food security; and extreme temperature changes affecting an organisation's premises, operations, supply chains, transport needs, and employee safety.

The commentary also 'encourages' entities to consider 'whether they have a material exposure to climate change risk by reference to the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures (TCFD) and, if they do, to consider making the disclosures recommended by the TCFD'.

The Governance Institute's guide is aimed at assisting ASX listed entities and others to identify and report climate change risks in line with Corporate Governance Council's recommendation.

A question of managing the financial risks and opportunities associated with climate change

In his foreword to the Guide, Australian Prudential Regulation Authority (APRA) member Geoff Summerhayes emphasises the need for business to manage the financial risks/opportunities associated with climate change. 'The impacts of a changing climate have proven to be foundational drivers of both risk and opportunity, affecting structural change within the global economy. The 4th edition of the ASX's Corporate

Governance Council's Corporate Governance Principles and Recommendations represent another important step in the increasing national and international recognition of these material risks and opportunities that must be carefully considered and evaluated by businesses' he writes.

[Note: APRA recently published two information papers setting out the regulator's policy and supervision priorities for the next 12-18 months. APRA identifies climate risk as one of its key focus areas. APRA has said that by the end of the year it will publish a new prudential practice guide to encourage regulated entities to better prepare for climate risks and clarify regulatory expectations. The regulator has also said that 'a key supervisory initiative for 2020 is to develop a climate change stress test'. The expected commencement date is 2021. A summary of APRA's supervisory and regulatory priorities is included in the 12 February issue of Governance News which is available on the MinterEllison website here.]

In a statement announcing the release of the Guide, the Governance Institute frames the need for entities to understand climate risk as a question of long-term sustainability and competitiveness. 'You need to understand climate change risks affecting your businesses to remain competitive. With stakeholders more focused than ever before on climate change and sustainability, if you fail to address these issues, the market will pass you by' the Governance Institute states.

What's in the guide?

- Chapter 2 provides an introduction to climate change concepts including the TCFD framework. It also gives an overview of the drivers behind increased reporting on climate change risk in Australia including, increased regulatory oversight and increasing investor and community interest. Page 7 of the report sets out a detailed timeline of relevant climate developments.

- Chapter 3 provides a break-down of the TCFD recommendations, an explanations of key concepts, and guidance on the requirements. It also highlights some of the challenges that have been identified in adopting the framework and some of the tools available to assist in meeting these challenges.

- Chapter 4 provides a concise summary of existing Australian climate reporting requirements, as well as practical guidance on reporting against the TCFD framework.

- Chapter 5 provides practical guidance including examples from Australian-listed entities and others on how they have approached climate change disclosure.

Practical steps entities can take to start reporting against the TCFD framework

The Climate Disclosure Standards Board (CDSB) and the Sustainability Accounting Standards Board (SASB) released the TCFD implementation guide in May 2019. This sets out eleven steps for getting started on TCFD reporting. The governance institute supplements this guidance, by suggesting a number of activities for Australian entities under each step. This is summarised below.

Step 1 - CDSB/SASB guidance: Secure the support of your board of directors and executive leadership team.

The Governance Institute suggests that this could involve: a) briefing the board and executive team around climate-related risk, the TCFD and the potential risks to the business; b) engaging with the Audit, Risk or Sustainability Committee to assist in promoting board support; c) giving presentations to the board on particular areas of climate-related risk as part of executive and board ongoing strategic discussions.

The Governance Institute observes that some boards have undergone training on climate change and climate risks to help them understand the issues and potential areas of interest and questions from investors.

Step 2 - CDSB/SASB guidance: Integrate climate change into key governance processes, enhancing board-level oversight through audit and risk committees.

The Governance Institute suggests a number of ways in which climate change could be integrated into governance processes. These include: a) conducting a gap analysis using a framework such as TCFD; b) identifying the board and management level committees and executives with specific responsibilities and clearly identify and document those responsibilities, information flows, and how overlapping responsibilities and accountabilities are to be managed; c) including regular reporting in board and committee calendars; and d) ensuring integration into internal assurance processes and scheduling.

Step 3 - CDSB/SASB guidance: Bring together sustainability, governance, finance, and compliance to agree on roles.

The Governance Institute says that entities could consider: a) identification of key role(s) in each area to be a climate change/sustainability sponsor with accountability for liaising on climate issues across business functions; b) establishing a management level climate change/ sustainability committee; c) the impact on management reporting.

Step 4 - CDSB/SASB guidance: Look specifically at the financial impacts of climate risk and how it relates to revenues, expenditures, assets, liabilities, and financial impact.

The Governance Institute says that this will involve mapping physical and transitional risks.

Physical risks being event driven risks eg increased severity of extreme weather events or the risks of rising sea levels caused by increased temperatures.

Transition risks being the risks relating to the transition to a lower carbon economy eg policy and legal risk, technology risk, market risk and reputational risks.

Step 5 - CDSB/SASB guidance: Assess your business against at least two scenarios.

The Governance Institute suggests that this could be carried out by using the principles and guidance on scenario planning in the TCFD guidance. This will include, at a minimum, a 2°C or lower scenario and further considering using an additional two or three scenarios that are most relevant to the entity's circumstances.

Step 6 - CDSB/SASB guidance: Adapt existing enterprise-level and other risk management processes to take account of climate risk.

The Governance Institute suggests that this could involve adapting the entity's existing risk management processes and would also include integrating climate related transition and physical risks.

Step 7 - CDSB/SASB guidance: Solicit feedback from engaged investors about what information they need to know about climate-related risks and opportunities.

The Governance Institute suggests that entities should consider: a) reviewing key investors' and investor representative bodies', public statements and publications about climate-related risk; and b) engaging in discussions with key investors' and investor representative bodies to understand their drivers and expectations.

Step 8 - CDSB/SASB guidance: Look at existing tools you may already use to help you collect and report climate-related financial information such as the CDP Questionnaire (aligned to the TCFD since 2018), the CDSB Framework, and the SASB Standards.

The Governance Institute suggests entities should engage with their Sustainability team to understand the drivers for the entity.

The Governance Institute also suggests that in addition to reviewing existing tools and information, entities should consider looking at disclosures by entities in similar industries. Chapter 5 of the Guide includes examples of the approach taken by a number of entities in a range of sectors.

Step 9 - CDSB/SASB guidance: Plan to use the same quality assurance and compliance approaches for climate-related financial information as for finance, management, and governance disclosures.

The Governance Institute suggests that entities consider: a) adapting existing internal and external assurance processes to cover climate-related disclosures; and b) pending adaptation of external assurance processes, take into account ASX Corporate Governance Council recommendation 4.3. 'A listed entity should disclose its process to verify the integrity of any periodic corporate report it releases to the market that is not audited or reviewed by an external auditor'.

Step 10 - CDSB/SASB guidance: Prepare the information you report as if it were going to be assured, even if you decide not to do so right now.

The Governance institute suggests that entities consider the impact of adapting existing internal and external assurance processes on timelines and processes for production and assurance of reports.

Step 11 - CDSB/SASB guidance: Look at the existing structure of your annual report and think about how you can incorporate the recommendations into your discussion of risks, management's discussion and analysis, and the governance section.

The Governance institute draws attention to the TCFD's emphasis that the annual report should tell a clear and coherent story, and guide the report user, making the connections between governance, strategy, risk management, target-setting, and performance.

Related Content

MinterEllison has released a report outlining developments in climate change risk across five key areas - climate risk disclosure and reporting, directors' duties, equity markets, debt finance and emissions reductions policies - and flagging developments to watch in 2020. The report is available on the MinterEllison website here.

[Sources: Governance Institute media release; Governance Institute guide, Climate change risk disclosure: A practice guide to reporting against ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, February 2020]

[Source: Governance Institute guide, Climate change risk disclosure: A practice guide to reporting against ASX Corporate Governance Council's Corporate Governance Principles and Recommendations, February 2020]

ASIC review of 30 June 2019 financial reports released

The Australian Securities and Investments Commission (ASIC) has ASIC announced the results of its review of the 30 June 2019 full-year financial reports of 200 entities.

Snapshot: Some Key Points

- **Asset values and impairment testing:** ASIC made inquiries of 47 entities on 80 matter with the largest number of inquiries relating to impairment of non-financial assets and inappropriate accounting treatments. ASIC says that directors and auditors should continue to focus on values of assets and accounting policy choices in 31 December 2019 financial reports. ASIC notes that ASIC Information Sheet 203 Impairment of non-financial assets: Materials for directors (INFO 203) may assist in this.

- **ASIC says that directors and auditors Directors and auditors should also focus on the impact of the newer accounting standards** on revenue, financial instruments, and leases, which can materially affect reported financial position and results.

The full report is available on the ASIC website here.

[Source: ASIC media release 07/02/2020]

Regulators

Top Story | APRA flags GCRA, climate risk and cybersecurity among its key priorities over the coming year

Overview | APRA's supervisory and policy priorities for the next 12 to 18 months

The Australian Prudential Regulation Authority (APRA) has released two papers identifying its planned changes to the prudential framework and the key risks within the financial system on which it will focus its supervisory efforts.

Key Takeouts

- **The policy and supervision priorities identified are underpinned by the four strategic goals in APRA's Corporate Plan**: 1) maintaining financial system resilience; 2) improving outcomes for superannuation members; 3) improving cyber-resilience in the financial sector; and 4) transforming governance, culture, remuneration and accountability (GCRA) across all APRA-regulated institutions.

- **Among APRA's key cross-industry policy priorities for 2020** are initiatives aimed at driving improvements in GCRA, including finalising a more robust prudential standard on remuneration, and updating prudential standards on governance and risk management.

- **APRA's 2020 supervision priorities** include: a) maintaining financial resilience, including through increased focus on recovery and resolution planning and stress testing; b) conducting a range of governance, culture, remuneration and accountability (GCRA) related supervisory reviews and deep dives, and using entity self-assessments to drive greater accountability; c) encouraging underperforming superannuation funds to urgently 'improve member outcomes or exit the industry'; and d) more closely assessing institutions' capability to deal with emerging and accelerating risks, such as cyber-security and climate change.

- **Climate risk:** APRA has said it will release a prudential practice guide to encourage regulated entities to better prepare for climate risks and clarify regulatory expectations by the end of the year. APRA will also develop a climate stress test 'to enable a better understanding of the overall financial system's resilience to climate-related risks'.

- **This is the first time that APRA has published its supervision priorities**. Commenting on this, APRA Chair Wayne Byres said that doing so is 'intended to create greater public awareness of the types of activities our supervisors undertake, and supports our commitment to greater transparency and accountability. Our new Year in Review publication will be used to report at the end of the year on our progress against the priorities we have identified'.

Context: APRA's policy and supervisory priorities

The Australian Prudential Regulation Authority (APRA) has released two documents setting out its policy and supervision priorities for the next 12 to 18 months.

APRA says that its priorities are underpinned by the four strategic goals set out in the regulator's most recent Corporate Plan namely: 1) maintaining financial system resilience; 2) improving outcomes for superannuation members; 3) improving cyber-resilience in the financial sector; and 4) transforming governance, culture, remuneration and accountability (GCRA) across all APRA-regulated institutions.

A high level summary of some of APRA's key policy and supervisory priorities is below.

[Note: Attachment B of the policies document is a table summarising the proposed actions/timelines for delivering APRA's policy objectives. Attachment A of the supervisory document is a table summarising APRA's supervisory activities and timelines.]

Cross industry policy and supervisory priorities

1. Governance, Culture, Remuneration and Accountability (GCRA) risk

Policy priorities: revising prudential expectations

APRA plans to update core cross-industry standards to strengthen prudential expectations for governance, remuneration, accountability and nonfinancial risk management.

- **Governance and risk management**

  - **Revised governance standard:** APRA intends to consult on changes to Prudential Standard CPS 510 in the second half of 2020. The expected effective date is 2022. The relevant superannuation standards, Prudential Standard SPS 510 Governance and Prudential Standard SPS 220 Risk Management, will also be reviewed.

  - **Remuneration:** APRA says that it expects to release a response paper on draft Prudential Standard CPS 511 Remuneration in the first half of 2020. The new standard is expected to be finalised in the first half of 2020. The expected effective date is July 2021. Consultation on associated reporting and disclosure requirements and prudential guidance will commence shortly thereafter.

[Note: APRA released a discussion paper and new draft Prudential Standard (CPS 511) proposing stronger and more prescriptive prudential requirements for remuneration across all APRA-regulated entities in the banking, insurance and superannuation sectors in July 2019. The deadline for submissions was the 23 October. The proposed new standard aims to address the remuneration-related recommendations made by the Financial Services Royal Commission (Recommendations 5.1, 5.2 and 5.3) as well as insights gained from the Prudential Inquiry into the Commonwealth Bank of Australia (CBA), APRA’s Review of Remuneration Practices at Large Financial Institutions and its summary of industry self-assessments of governance, accountability and culture. For a summary of APRA's proposals see: Governance News 24/07/2019.]

[Note: In a recent speech providing an update on the consultation, APRA Chair Wayne Byres said that APRA is working through the submissions received in response and is yet to finalise its approach. See: Governance News 13/11/2019.]

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- **Accountability:** APRA plans to consult on updates to the existing fit and proper requirements in Prudential Standard CPS 520 Fit and Proper in the second half of 2020. APRA says that given the significant overlap with the obligations of accountable persons under the Banking Executive Accountability Regime (BEAR), the updates will address potential inconsistencies and also support the alignment with the legislative requirements under the extended accountability regime (the Financial Accountability Regime (FAR)). The expected effective date is 2022.

[Note: On 22 January, the government released a proposal paper, outlining plans for the new Financial Accountability Regime (FAR) (which will replace the Banking Executive Accountability Regime (BEAR)). The new regime proposes to extend BEAR-like accountability requirements to other APRA-regulated entities and directors/senior executives in accordance with the government's response to several Hayne Commission recommendations. The due date for submissions to the proposals is 14 February. For a summary of the proposed changes, including expert insights into the broader implications for industry see: Governance News see: Governance News 23/01/2020.]

GCRA Risk: Supervisory priorities

From a supervisory perspective, APRA says that it is intensifying its focus on GCRA to enhance the resilience of regulated entities by: a) strengthening the prudential framework; b) sharpening APRA's supervisory focus; and c) sharing APRA's insights.

Details

- **Self-assessment follow up — progress against remediation plans:** APRA says that ensuring that entities appropriately address the weaknesses identified in CBA-style self-assessments remains a core supervisory focus area. As such, APRA plans to undertake a series of targeted engagements during 2020 to assess entities progress against their remediation plans. APRA says that 'more forceful supervisory actions will be considered where sufficient progress has not been made.'

- **Review into governance practices**: APRA says it has also recently commenced a review to assess the effectiveness of governance arrangements across a subset of regulated entities. APRA is seeking to identify drivers of effective governance practices by reviewing: a) the value of insights gained from reviews required under Prudential Standard CPS 220 Risk management (CPS 220); b) the robustness of processes supporting the CPS 220 risk management declaration; c) the role and effectiveness of board committees; and d) processes undertaken to assess board effectiveness.

- **Deep dive risk culture reviews:** APRA will be conducting 'deeper reviews of risk culture practices'. APRA says that these 'deep dive' risk culture reviews will be set at three per year from 2020 onwards. APRA expects that the reviews will involve a high degree of supervisory intensity, including interviews with directors, executives and staff as well as focus groups involving non-managerial staff.

- **Remuneration — assessment of CPS 511 implementation plans:** APRA says that once CPS 511 is finalised it will commence an assessment of entities' implementation plans to gauge emerging market practice. APRA says that it will communicate the findings to industry to reinforce APRA's expectations for implementation. In addition, APRA will undertake a series of 'deep dive' reviews with a focus on the design, implementation and outcomes of remuneration frameworks.

- **BEAR Review:** APRA says that it is working closely with the Treasury and the Australian Securities and Investments Commission (ASIC) to extend the BEAR to the insurance and superannuation sectors. Once the proposed new legislation is finalised, APRA will start engaging with entities on planning for implementation of the regime. APRA adds that it is currently assessing how effectively BEAR has been implemented in the banking industry and plans to make the key findings of this review public by mid-2020.

2. Financial system resilience: policy and supervisory priorities

Priorities include the following.

- **Risk management and operational and non-financial risks:** APRA expects to consult on standards for the management of operational and other non-financial risks and compliance (Risk management CPS 220), and revised Prudential Standard CPS 231 Outsourcing and Prudential Standard CPS 232 Business Continuity Management in the second half of 2020. The expected effective date is 2022. APRA says that the relevant superannuation standards, Prudential Standard SPS 231 Outsourcing and Prudential Standard SPS 232 Business Continuity Management, will also be reviewed as part of this process.

- **Resolution framework:** APRA plans to consult on a new prudential standard for recovery and resolution planning which will implement reforms from the Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Act 2018 (Crisis Management Act) in the first half of 2020 with a view to finalising the standard by the end of the year. The new standard is expected to set out requirements for the development and execution of recovery and resolution plans and will apply to ADIs, general insurers and life insurers. The expected effective date for the new standard is 2022.

From a supervisory perspective, APRA observes that low interest rates, combined with limited growth, are creating a profitability challenge for many entities. APRA says that its supervision 'will be looking for signs that these pressures are inducing entities to increase their risk-taking as a means of sustaining their desired returns'.

APRA will also strengthen its own internal capabilities to deal with possible entity failures.

3. Cybersecurity

Cyber-security — implementation of CPS 234 and IT Risk data collection: APRA says that its current supervisory focus is on ensuring effective implementation of new standard CPS 234 Information Security. In addition, APRA says it is also developing a new data collection to gain a broader understanding of entities' management of Information Technology (IT) risk, including cyber risk. This is expected to assist the regulator in directing supervisory resources to areas of heightened risk. APRA is currently trialling the IT risk data collection at selected insurers and large ADIs, and intends to extend the data collection to all industries in due course.

New data standard: APRA will consult on a new cross-industry standard on data management to improve the quality of risk data aggregation and reporting in the second half of 2020. The expected effective date is 2021/2022.

4. Climate change financial risk

Policy priorities: APRA intends to publish a prudential practice guide to encourage regulated entities to better prepare for climate risks and clarify regulatory expectations. This guidance is intended to assist entities in developing frameworks for the assessment and monitoring of climate-related risks, including aspects of governance, strategy, risk management, metrics and disclosure. Consultation is expected to commence in mid-2020. Guidance is expected to be finalised by the end of the year.

Supervisory priorities: APRA says that 'a key supervisory initiative for 2020 is to develop a climate change stress test'. The stress test is intended to enable a better understanding of the overall financial system's resilience to climate-related risks. APRA says it is collaborating with the Reserve Bank of Australia and Australian Securities and Investment Commission on the design of the stress test. The expected commencement date is 2021.

5. Other cross industry priorities

Stress testing:

- **Policy priorities:** APRA intends to publish a stress testing prudential practice guide. APRA expects to consult on the prudential practice guide in the second half of 2020.

- **Supervisory priorities**

  - **Banks:** From 2020, APRA will transition to more frequent, annual industry stress testing for large ADIs (previously, a comprehensive industry stress test had been conducted on a three-yearly cycle, with additional, less intensive testing conducted in the intermediate years). APRA also plans to test resilience to broader stress scenarios, including the impacts from operational and climate change financial risks. APRA is also currently undertaking a stress test of the largest ADIs to assess their resilience to a severe economic downturn and significant liquidity stress. APRA says that it will be engaging directly with individual ADIs on the results of the stress test and that at the conclusion of the exercise, it plans to publish a report on its overall assessment of the banking industry's financial resilience.

  - **General insurers:** APRA is currently assessing selected general insurers' internal stress testing capabilities. APRA will engage with the industry during the second half of 2020 on identified areas for improvement. In addition, in response to the recent severe bushfires and other climate-related events, APRA will be undertaking scenario analysis of insurer's reinsurance programs, to understand the impact of further natural catastrophe events during the current financial year.

Ownership limits: APRA published new financial sector shareholdings rules in 2019, following legislative change to the Financial Sector (Shareholdings) Act 1998 (FSSA) that raised the minimum shareholding in ADIs, general insurers and life insurers requiring approval from 15% to 20% and also introduced a new streamlined 'fit and proper' test. APRA will publish additional guidelines in the second half of 2020, which will assist shareholders in making an application under the FSSA.

Industry specific priorities

Banking: policy priorities

- **Unquestionably strong capital and the Basel III reforms:** APRA expects to consult further on changes to the credit risk standards, as well as its preferred option for implementing the transparency, comparability and flexibility requirements (including the capital floor), in the first half of 2020. A further round of consultation on the draft standards is also planned for later in 2020. APRA says that it plans to finalise the standards around the end of 2020, with the revised standards likely to take effect from the beginning of 2022, consistent with international timelines.

- **Measurement of capital:** APRA is currently considering updates to its criteria for measuring an ADI's regulatory capital and intends to finalise the changes to Prudential Standard APS 111 Capital Adequacy: Measurement of Capital in early 2020, with the revised standard to take effect from 1 January 2021.

- **Stored value facilities framework:** APRA is reviewing its approach to regulating Purchased Payment Facilities (PPFs) to ensure it is proportionate to the risks, and appropriate in the context of the Council of Financial Regulator's (CFR's) proposed framework and recommendations arising from the review process. APRA will consult on a revised prudential standard in the second half of 2020.

- **ADI and NOHC authorisation guidelines:** APRA is reviewing its authorisation guidelines for ADIs, including for foreign ADI branches and non-operating holding companies (NOHCs). APRA intends to publish revised ADI authorisation guidelines in the first half of 2020, and revised NOHC authorisation guidelines in the second half of 2020.

Banking: supervisory priorities

- **Cyber-resilience:** In addition to cross-industry initiatives on cyber resilience, APRA says it will be prioritising the review of IT risk management at large ADIs in 2020.

- **Financial resilience/crisis readiness – problem loan management review:** APRA will commission an in-depth targeted review of processes for managing problem loans and collateral. The targeted review will examine whether credit systems and processes would be effective in managing the potential risks from 'less benign economic conditions'. The review will focus on the largest ADIs and is expected to be undertaken in the second half of 2020.

- **APRA will also continue to assess the long-term risk outlooks** to banks' business models throughout 2020. The outcomes of these assessments will inform APRA's supervisory strategies for individual entities. APRA says that those with the weakest outlooks will be prioritised for more intensive scrutiny and contingency planning.

Insurance policy priorities

- **PHI Capital framework:** The current consultation on the PHI capital framework will close on 27 March 2020. APRA expects to consult on draft prudential standards in the second half of 2020. The expected effective date is 2023.

- **AASB 17 and LAGIC refinements:** APRA's capital framework for insurers is based on an accounting treatment that will be revised with the introduction of AASB 17. APRA says it will continue to develop its position on the integration of AASB 17 into its capital and reporting standards in more detail over the coming year and expects to release a discussion paper in the first half of 2020. In addition, APRA will also consult on refinements to the LAGIC framework. APRA says it is currently considering stakeholder feedback on implementation timeframes, taking into account the International Accounting Standards Board's proposed effective date for the new standard. The expected effective date for the changes, once finalised is 2023.

- **Offshore reinsurers:** APRA intends to consult on the draft revised Prudential Standard LPS 117 Capital adequacy: Asset concentration risk charge (LPS 117) in the first half of 2020. The changes are expected to be finalised in the first half of 2021. The expected effective date is 2021/2022.

Insurance: supervisory priorities

From a supervisory perspective, APRA identifies a number of areas of focus. These include:

- **General Insurance**:

  - **Overseas reinsurance:** APRA will be looking to increase its supervisory engagements with the parent entities of overseas reinsurance groups and the home regulators of material international reinsurers. Supervisors will also direct more time and resources to analysing overseas reinsurance group reporting and recovery planning.

  - **PI and D&O review:** Insurers with material professional indemnity (PI) or directors and officers (D&O) insurance will be subject to heightened supervision. APRA supervisors will engage with insurers to understand how they are responding to the risks affecting the availability and affordability of the products

- **Life insurers — IDII intervention**: APRA says that the life insurance industry will remain subject to heightened supervisory intervention, in light of concerns about the sustainability of certain products, particularly individual disability income insurance (IDII). In addition to measures already in place (eg higher capital requirements) to address flaws in product design/pricing, APRA will introduce a new 'more granular IDII data collection to help monitor and assess life companies' progress in meeting APRA's expectations'. These issues will remain an area of focus for APRA in 2020 and that it will consider 'more forceful supervisory actions) eg issuing directions or making changes to licence conditions where APRA considers that do not met APRA's expectations. APRA says that it will also 'consider lessons learnt from the work in IDII and turn its attention to other higher risk product types, such as Total and Permanent Disability Insurance'.

- **Friendly societies**: In the first half of 2020, APRA will release a roadmap for its approach to supervising the friendly society industry which will outline APRA's supervisory response to industry resilience and sustainability risks. APRA says that friendly societies should expect heightened supervisory intensity in areas of: a) financial resilience; b) risk governance; c) board tenure; d) profitability and e) capital.

- **PHIs — resilience planning:** In June 2019, APRA set out its expectations of private health insurers (PHIs) for improving their resilience to ongoing sustainability challenges. APRA required PHIs to develop strategies to address sustainability risks, as well as recovery plans. During 2020, APRA will focus on assessing industry's progress in addressing these concerns. APRA cautions that 'PHI's that continue to take a passive approach to these risks can expect a more forceful supervisory response from APRA'.

Superannuation policy priorities

APRA says that it is 'focused on maintaining both the resilience and sustainability of the superannuation sector, and the delivery of improved outcomes for superannuation members, consistent with APRA's strategic focus area'**.**

- **Enhancing the prudential framework:** APRA plans to progress the 'full suite of enhancements outlined in its post-implementation review of the superannuation prudential framework' over 2020 and into 2021, including the release of a discussion paper covering the governance related prudential standards, in the first half of 2020. Enhancements to the risk management, outsourcing and business continuity management prudential standards will follow in mid to late 2020. In addition, APRA will be updating its guidance on the sole purpose test in 2020.

- **Royal Commission recommendations**: APRA will continue to support the government in implementation of the Hayne Commission recommendations including recommendations to: a) expand ASIC's role in superannuation; b) prohibit certain dual regulated entity structures (which present unmanageable conflicts of interest); c) prohibit and limit the deduction of advice fees from superannuation accounts;

and d) establish a compensation scheme of last resort. APRA will also look to provide guidance to the industry regarding associated legislative changes, as required.

- **Protecting your superannuation package reforms**: Over 2020, APRA will continue to work with government and industry to ensure that the policy intent of the insurance reforms is achieved, including through the issuance of further guidance as needed.

Superannuation: supervisory priorities

From a supervisory perspective, one of APRA's core areas of focus is improving outcomes for superannuation members. APRA identifies a number of aimed at intensifying its supervisory approach to this end. Measures include the following.

- **Implementation of SPS 515:** ensuring that trustees effectively implement the new Prudential Standard SPS 515 Strategic Planning and Members Outcomes (SPS 515)

- **Follow up work on the fees and charges review** (industry level findings will be made public in the first half of 2020)

- **Management of conflicts of interest (outsourcing review):** APRA says that it has commenced an in depth review of selected large trustees' management of outsourcing providers, focusing on related party arrangements and managing conflicts of interest. APRA plans to make its industry level findings public in early 2021.

- **Board effectiveness:** APRA plans to review the effectiveness of board appointment processes and the appropriateness of tenure policies with a view to limiting actual/perceived barriers to achieving the 'optimal mix of skills and experience needed to fulfil trustee obligations'.

- **Superannuation data:** APRA will be issuing periodic data collection requests of trustees as part of its project to enhance superannuation data collection.

[Source: APRA media release 30/01/2020; APRA information paper, APRA's policy priorities January 2020; APRA Information paper, APRA's supervision priorities January 2020]

Financial Services

Implementing FSRC recommendations 1.2, 1.3, 4.2 and 4.7: Legislation to extend UCT protections to insurance contracts and legislate a best interest duty for brokers (among other measures) has passed both houses

The Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures) Bill 2019 passed both houses on 6 February.

The legislation implements the government's response to four Financial Services Royal Commission Recommendations.

1. Extend Unfair Contract Terms (UCT) protections to insurance contracts (FSRC recommendation 4.7)
2. Extend consumer protection provisions of the Australian Securities and Investments Commission Act 2001 (ASIC Act) to funeral expenses policies (FSRC recommendation 4.2)
3. Legislate a best interests duty for mortgage brokers (FSRC recommendation 1.2)
4. Address conflicted remuneration for mortgage brokers (FSRC recommendation 1.3)

Timing?

- **The unfair contract terms regime** will apply to insurance contracts that are new or renewed after 5 April 2021. The amendments will also apply to terms of a contract varied after that date.
- **The consumer protection provisions in the ASIC Act will apply to funeral expenses policies** from the day after the legislation receives Royal Assent.
- **Mortgage broker reforms:** The changes to require mortgage brokers to act in the best interests of consumers and to address conflicted remuneration for mortgage brokers will apply from 1 July 2020.

Response

In a statement, the Consumer Action Law Centre (Consumer Action), CHOICE and Financial Rights Legal Centre (Financial Rights) welcomed the passage of the legislation 'as an excellent first step that will help to curb the significant consumer harm that has been fuelled by industries who have profited from loopholes and exemptions in Australia's existing laws'.

[Sources: Financial Sector Reform (Hayne Royal Commission Response—Protecting Consumers (2019 Measures) Bill 2019; Consumer Action Law Centre media release 06/02/2020)

Stronger powers for ASIC: Legislating the government's 'additional commitments', as outlined in the Financial Services Royal Commission implementation roadmap

The government's roadmap for implementing its response to the Hayne Royal Commission recommendations flagged plans to implement a number of 'additional commitments' requiring a legislative response by the end of 2019, including commitments to implement certain ASIC Enforcement Taskforce Review Recommendations.

On 28 November, Financial Sector Reform (Hayne Royal Commission Response – Stronger Regulators (2019 Measures)) Bill 2019 was introduced into the House of Representatives.

The Bill includes measures to: a) harmonise ASIC's search warrant powers; b) improve ASIC's ability to access certain telecommunications information; c) strengthen ASIC's licensing powers; and d) strengthen ASIC's power to ban people in the financial sector.

On 6 February the Bill passed both houses with no amendments.

Commencement date: The changes will take effect from the day after the legislation receives Royal Assent.

[Source: Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Bill 2019]

FinTech sandbox Bill update | Treasury Laws Amendment (2018 Measures No 2) Bill 2019 passed both houses on 10 February

Treasury Laws Amendment (2018 Measures No 2) Bill 2019 passed both houses on 10 February.

Announcing the passage of the Bill, Assistant Minister for superannuation, financial services and financial technology Jane Hume said that the legislation 'builds significantly on a regulatory sandbox launched by ASIC in 2016, expanding the scope of what can be tested and how long businesses can test. The enhancements enable firms to test specified financial services including financial advice, the issuing of consumer credit contracts and facilitating crowd-sourced funding…These changes will ensure that Australian fintech is internationally competitive, and that all Australians spend less time and money managing their own affairs.'

[Source: Treasury Laws Amendment (2018 Measures No. 2) Bill 2019; Assistant Minister for Superannuation , financial services and financial technology Jane Hume media release 11/02/2020]

Bill to facilitate the exit of ERFs Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 introduced

Key Takeout: The Bill is intended to facilitate the exit of all eligible rollover funds from the superannuation system by 30 June 2021.

Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020, was introduced into the House of Representatives on 6 February.

The Bill is intended to facilitate the closure of eligible rollover funds (ERFs) by 30 June 2021 and allow the Commissioner to reunite amounts he/she receives from ERFs with a member's active account.

Details: In line with recommendation 5 of the Productivity Commission's report — Superannuation: Assessing Efficiency and Competitiveness (see: Governance News 16/01/2019) — the Bill proposes to allow eligible rollover fund (ERF) trustees to voluntarily transfer any amount to the Australian Taxation Office (ATO), with a requirement to transfer all accounts below $6,000 to the ATO by 30 June 2020, and all remaining accounts to the ATO by 30 June 2021.

It's proposed that the ATO will then work to proactively re-unify the amounts it receives from ERFs, together with interest, to members' active superannuation accounts where possible, or in some cases directly to the individual.

In his second reading speech, Minister for Population, Cities and Urban Infrastructure Alan Tudge said that the 'changes build on the successes of the government's Protecting Your Super package, passed by the parliament last year. By reuniting these lost and forgotten accounts with their rightful owners, members will benefit from higher account balances and no longer be paying multiple sets of fees'.

Proposed timing: The proposed commencement date is the day after Royal Assent. Superannuation funds will be prevented from transferring new amounts to an ERF from the later of 7 days after Royal Assent or 1 May 2020. APRA will not be able to accept an application to operate a new ERF from the day after Royal Assent.

[Sources: Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020; Minister's second reading speech]

An important measure to rebuild trust following the Hayne Commission? AFCA submission supports the establishment of a CSLR scheme

The Australian Financial Complaints Authority's (AFCA's) submission to the Treasury's discussion paper on establishing a compensation scheme of last resort (CSLR) reconfirms AFCA's support for a CSLR.

In a statement announcing the publication of AFCA's submission, AFCA Chief Ombudsman and CEO David Locke AFCA said 'A compensation scheme of last resort is an important back-stop that ensures that people who have been the victims of misconduct and lost out through no fault of their own can be compensated when the financial firm is unable to pay…Without this measure there is a significant gap that will cause considerable hardship to consumers who have done nothing wrong, who have suffered financial loss, taken appropriate action through AFCA, only for that outcome not to be honoured by the financial firm," he continued.'

Mr Locke added that the measures is also an important part of restoring consumer trust and confidence in the financial services sector following the Hayne Commission. ' This rebuilding of trust is in the interests of all financial services firms and all Australians. We look forward to working with the Government and stakeholders to implement this important reform' Mr Locke said.

[Sources: AFCA media release 05/02/2020; AFCA's submission to Treasury Discussion Paper — Establishing a compensation scheme of last resort 05/02/2020]

APRA member Geoff Summerhayes follows up on his recent PHI comments

Context: In a recent speech to the Members Health Directors Professional Development Program, Australian Prudential Regulation Authority (APRA) member Geoff Summerhayes spoke about the sustainability challenges facing the private health insurance (PHI) sector and the need for urgent (and collective) action to address them (see: Governance News 5 February 2020 at p30).

Industry response to Mr Summerhayes' speech

- **'Inflammatory', 'ill-informed' and 'potentially dangerous'?** Following Mr Summerhayes' speech, The AFR reported that some PHIs and others had questioned his assessment of the sector. CEO of not-for-profit health fund industry body Members Health Matthew Koce is quoted as labelling Mr Summerhayes' comments 'inflammatory' and potentially damaging to confidence in the sector. Mr Koce reportedly said that many not-for-profit funds are stable, adequately capitalised and growing faster than the rest of industry. Reportedly, CEO of the Australian Private Hospitals Association Michael Roff agreed, labelling Mr Summerhayes' comments as 'inflammatory', 'ill-informed' and 'potentially dangerous'.

  Separately, the AFR reports that Members Heath Fund Alliance wrote to the Treasurer calling for Mr Summerhayes to be stood down from his role. 'Members Health has lost confidence in Mr Summerhayes' role as an objective regulator and in the strongest possible terms, we urge you to remove him from his role effective immediately' the AFR quotes from the letter. Reportedly, Private Hospitals Australia also wrote to the Treasurer saying it had lost confidence in the Australian Prudential Regulation Authority board member.

- **According to The AFR, larger insurers including Medibank, NIB and Bupa have spoken out in support of Mr Summerhayes following the speech.**

[Source: [registration required] The AFR 05/02/2020;09/02/2020]

Follow up comments from APRA member Geoff Summerhayes: Why health insurers must embrace change

On 5 February, Mr Summerhayes released an opinion piece in The Australian entitled 'why health insurers must embrace change', in response to 'heated responses' from industry stakeholders.

- **Clarification**: Mr Summerhayes reiterated that 'APRA's primary objective for private health insurance' is to 'see a soundly managed, financially stable and competitive health insurance industry in Australia, for the ultimate benefit of the health insurance policyholders'. Mr Summerhayes then condensed the key points from his speech into four points.

  1. 'The private health insurance industry today is profitable and well-capitalised…APRA's role is to help keep it that way'
  2. 'the outlook is increasingly challenging: the trends that are slowly diminishing insurers' financial sustainability are not abating, in spite of efforts by the industry, and substantial ongoing support and action by the government, to address the affordability conundrum'
  3. 'Many of the most significant factors driving the sustainability crisis are outside the control of insurers, such as the ageing population or the rising cost of medical procedures and equipment.'
  4. In light of this, APRA is of the view that a 'whole-of-industry response is needed to reverse the trends that challenge the sector's long-term viability. But equally, insurers cannot be complacent, and shouldn't be waiting for others to provide a cure'.

- **Mergers seem 'inevitable' but APRA 'has no particular wish for this to happen':** In light of the combination of pressures on the sector Mr Summerhayes writes, 'significant changes, significant industry consolidation, particularly among smaller insurers, seems inevitable'. However, he clarifies that 'APRA has no particular wish for this to happen. As with other sectors of the economy, the community benefits from a diverse and innovative marketplace, with a range of competitors jockeying to best serve their current and potential customers today and into the future'.

Mr Summerhayes writes that APRA's 'purpose in sounding the alarm is therefore not to promote or encourage mergers among insurers, many of which have long, proud histories of service to the community, it is to urge them to take action so that they are well-positioned to continue to serve their members well into the future. There is time for the industry to evolve and adapt, but the challenges are such that there is no time for complacency. This is and remains APRA's key message to the industry'.

- **Mergers are only one option:** As part of a broader focus on resilience in the sector, APRA has been encouraging PHIs to have a 'plan B'. However, 'mergers are one option' in this context. Others might include, Mr Summerhayes suggests, greater use of alliances and partnerships that, for example, help generate scale efficiencies in other ways. 'Exploring and planning for options does not mean they need to be exercised, but does mean they can be quickly executed if circumstances warrant it. In doing this, APRA is seeking to ensure private health insurers have the best possible chance of succeeding'.

[Source: [registration required] The Australian 09/02/2020]

Overkill? The AFR reports that AFSA has queries whether extending the BEAR to the superannuation sector is necessary

Context – plans to extend the BEAR: On 22 January, the government released a proposal paper, outlining plans for the new Financial Accountability Regime (FAR) (which will replace the Banking Executive Accountability Regime (BEAR)) and extend BEAR-like accountability requirements to other APRA-regulated entities and directors/senior executives in accordance with the government's response to several Hayne Commission recommendations. The due date for submissions to the proposals is 14 February. (For a summary of the proposed changes, including expert insights into the broader implications for industry see: Governance News 23/01/2020).

Overkill? The AFR reports that the Association of Superannuation Funds Australia (ASFA) CEO Dr Martin Fahy has questioned whether the proposals to extend the BEAR to superannuation funds and insurers is necessary in light of the fact that the Hayne Commission demonstrated that the incentive driven issues identified in the banking sector, are not present in the superannuation sector and the existing stringent obligations under the Superannuation Industry Supervision Act (SIS Act). 'If FAR is the answer then what was the question? What is the mischief you are trying to address?' Dr Fahy is quoted as saying.

Further, Dr Fahy reportedly cautioned that extending the BEAR could incur unintended consequences. For example, he reportedly suggested that the proposed personal penalties and bonus deferrals 'might drive out innovation because there will be less incentive to be innovate in terms of taking the risks around the investment, however well-managed'. In addition, he cautioned that the requirements could increase compensation costs and compliance costs.

'We would say it risks creating perverse outcomes, because instead of improving outcomes you risk making them worse' Dr Fahy reportedly said.

[Source: [registration required] The AFR 06/02/2020]

Related News

The AFR reports that the big four banks have also raised concerns about the proposed changes at recent roundtable meetings, and more particularly have raised concerns that proposed plans to extend the penalty regime to a broader range of roles (including 'middle managers') may discourage people from joining the industry and negatively impact returns for investors.

[Source: [registration required] The AFR 07/02/2020]

Open Banking update | ACCC Commissioner Sarah Court has announced 'a major milestone in delivering the Consumer Data Right in banking'. The ACCC has formally made the Competition and Consumer (Consumer Data Right) Rules

The Australian Competition and Consumer Commission (ACCC) announced that it has formally made the Competition and (Consumer Data Right) Rules.

In addition to legally requiring the four major banks to share product reference data with accredited data recipients, the Rules also give legislative force to consumer data sharing obligations in banking that become mandatory from 1 July 2020.

- Consumer data relating to credit and debit cards, deposit accounts and transaction accounts must be made available from 1 July 2020.

- Consumer data relating to mortgage and personal loan data must be able to be shared from 1 November 2020.

The Rules came into effect on 6 February 2020.

Explaining the significance of making the Rules, ACCC Commissioner Sarah Court said 'Product reference data is vital for accredited data receiving businesses to provide comparison services and potentially offer better deals to consumers. Having the Consumer Data Right Rules in place means that from July this year, when consumers choose to direct their bank to share their data with another accredited data recipient, the banks must do so'.

[Sources: ACCC media release 05/02/2020; Competition and Consumer (Consumer Data Right) Rules 2020]

Progress update: Legislation to implement the government's comprehensive credit reporting regime has progressed to second reading stage in the senate

The National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 has progressed to second reading stage in the senate having passed the House of Representatives with no amendments.

Some Key Points

- Schedule 1 proposes to amend the National Consumer Credit Protection Act 2009 (Credit Act) to mandate a comprehensive credit reporting regime (the mandatory regime). Under this new regime, it's proposed that eligible licensees (who on 1 April 2020 are large ADIs), must provide credit information on consumer credit accounts to credit reporting bodies.
- Schedule 2 to the Bill proposes to amend the Privacy Act 1988 to permit reporting of financial hardship information within the credit reporting framework. Schedule 2 to the Bill also makes other minor changes to improve the overall administration of credit reporting.

In his second reading speech, Treasurer Josh Frydenberg said that the measures are designed to increase competition in the financial sector. 'Under the comprehensive credit reporting regime, consumers will have better access to credit and will be able to use their reliable credit history to seek more competitive rates. Those consumers who possess a poor credit rating will be able to demonstrate their creditworthiness through future reliability. Credit providers will have a more complete picture of a consumer's financial situation. This will help them to better price credit and meet their responsible lending obligations' he said.

Timing? The proposed commencement date is the day after Royal Assent.

[Sources: National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019; Minister's second reading speech]

APRA consultation on increased transparency of general insurance and life insurance data

APRA has written to insurers outlining proposals to increase transparency around life and general insurance data by publishing a greater breadth of industry-aggregate data.

Details

- APRA is proposing to determine class of business and product group data to be non-confidential, excluding data relating to descriptions of individual adjustments to risk charges or data where individual counterparties are named. Publication of industry aggregate data that is subsequently determined to be non-confidential is proposed to take effect in the second half of 2020.

- APRA also proposes to begin publishing explanations from individual general insurers and life insurers in relation to material revisions to, or large movements in, their data, including whether or not APRA requested the revision. APRA says that the purpose of this is to support informed decision-making and greater transparency by providing detail on significant data movements.

- APRA says that any future changes to the data included in APRA's general insurance and life insurance industry publications, including any future publication of entity-level class of business and/or product group data, will be subject to further consultation.

Why is APRA proposing these changes?

APRA says that publishing a greater breadth of industry aggregate date will enhance transparency and accountability in the life insurance and general insurance industry and that this will in turn enhance competition, efficiency, and contestability in the financial sector and boost innovation and productivity in the economy.

In addition, APRA says that the proposed changes will facilitate greater consumer understanding and more informed public discussion of insurance issues. 'Publishing complete, unmasked data will also support informed decision-making for all market participants, consultants, analysts and other users by facilitating public access to data of all classes of business/product types' APRA states.

Six week consultation: feedback requested

APRA is seeking feedback on the following.

- Details of specific class of business or product group data items that would create detriment if they were made non-confidential.

- Specific information on how the disclosure of these data items would lead to detriment to the general insurers or life insurers or other parties' commercial interests, and the extent to which that could occur.

- The time period within which data items might be regarded as no longer being confidential, if there are market sensitivity issues.

- The benefits or costs associated with the voluntary or mandatory non-confidential determination and publication of explanations from individual general insurers/life insurers in relation to material revisions to, or large movements in, their data, including whether or not APRA requested the revision.

- Any other comments.

Timing: The due date for submissions is 20 March 2020.

[Sources: APRA Proposal to increase transparency of general insurance and life insurance data 10/02/2020; Letter: APRA commences consultation on increased transparency of general insurance and life insurance data]

ASIC has issued an update on compensation paid by certain financial institutions because of non-compliance advice or FFNS misconduct

The Australian Securities and Investments Commission (ASIC) has released an update on compensation paid by AMP, ANZ, CBA, Macquarie, NAB and Westpac because of non-compliant advice or fee for no service (FFNS) misconduct.

According to ASIC, the six institutions have paid or offered a total of $749.7 million in compensation, as at 31 December 2019, to customers who suffered loss or detriment.

The statement includes a breakdown of the compensation payments made/offered by each institution as at 31 December 2019.

[Source: ASIC media release 11/02/2020]

Parliamentary Committee ongoing review of the four major banks and other institutions: public hearing dates announced

The House of Representatives Standing Committee on Economics will hold public hearings as part of its review of the four major banks and other institutions on the following dates:

- Insurance sector: Public hearings will be held over two days in Sydney on 28 and 29 April 2020. The program for the hearings has yet to be released.
- Banking sector: Australia's four major banks will appear before the Committee at public hearings on Friday 12 of June (Sydney) and 26 June (Canberra)

[Source: Standing Committee on Economics — Review of the Four Major Banks and other Financial Institutions]

In Brief | The Insurance Council of Australia (ICA) has issued a 'catastrophe declaration' in response to property losses caused by storms and flooding along the east coast since 5 February. According to the ICA's statement as at 7am 10 February, insurers had received 10,000 claims with the value of claims estimated at $45 million. The declaration means claims will be given priority by insurers. The statement adds that this is the sixth Catastrophe declared in the past five months

[Source: ICA media release 10/02/2020]

In Brief | The Australian Banking Association has announced that former Australian Government Solicitor Ian Govey has been appointed to chair the Banking Code Compliance Committee (BCCC), the independent body that monitors and enforces the new Banking Code of Practice

[Source: ABA media release 12/02/2020]

Risk Management

Climate Risk

Top Story | 2020's 'new normal': climate change risk review and governance issues to watch in the year ahead

MinterEllison's Climate Risk Governance team has released a paper outlining developments in climate change risk across five key areas - climate risk disclosure and reporting, directors' duties, equity markets, debt finance and emissions reductions policies - and flagging developments to watch in 2020.

You can download the paper from the MinterEllison website here: https://www.minterellison.com/articles/climate-change-risk-review-and-governance-issues-to-watch-in-2020

Five actions mining CEOs should take to respond to the impact of climate change: McKinsey report calls on miners to step up their climate transition efforts

Report Overview | McKinsey & Co, Climate risk and decarbonization — What every mining CEO needs to know

Key Takeouts

- **Mining companies need to step up their climate transition efforts** for a number of reasons including: 1) the fact that the current pace of action is too slow to meet the goals of the Paris Agreement; and 2) the potential risk to their long-term reputations and licence to operate due to changing investor/community expectations.
- **Three key risks for mining companies:** The report identifies and provides detailed explanation of three key climate risks for miners: which mining assets are most at risk from physical climate change; how decarbonisation could shift demand for key minerals; and what actions mining companies could take to decarbonise their own operations.
- **Guidance for leaders:** The report identifies five steps leaders can take to help ensure their organisation is responding effectively to climate related risks/opportunities

The headline message in McKinsey's report is that mining companies need to step up their climate transition efforts for a number of reasons including the potential risk to their long-term reputation and licence to operate. 'Action on climate change is growing in the mining industry, as companies review commodity portfolios, set targets, and engage with stakeholders. Yet these actions are too modest to reach the 1.5°C to 2.0°C scenario and may not be keeping up with society's expectations — as increasingly voiced by investors seeking disclosures, companies asking their suppliers to decarbonize, and communities advocating for action on environmental issues' the report states.

Climate risk for mining companies: Three key issues to consider

The report is organised around three key questions/issues for miners to consider:

1. Which mining assets are most at risk from physical climate change
2. How decarbonisation could shift demand for key minerals
3. What actions mining companies could take to decarbonise their own operations

The report provides data and detailed explanation of each issue.

Five things executives can do

The suggests that mining executives should consider taking the following actions to help ensure their organisation is responding effectively to climate related risks/opportunities.

1. Perform 'an end-to-end diagnostic of climate change's effects on the business' to determine which assets to protect from physical climate change and which stand to gain or lose from decarbonisation.

2. Ensure climate change (risks/opportunities) are a board level topic.

3. Focus on operational transformation, investments, and innovation.

4. Embed 'climate intelligence' into decision making, and with this lens in place, evaluate and if necessary, rethink your portfolio.

5. Continue to engage on the issue. For example, through reporting partnerships. The report observes that some investors, such as those signed with the Task Force on Climate-related Financial Disclosures (TCFD) require climate-risk disclosures and that will only become more important as climate expectations mature. The report suggests that this reporting may have a number of benefits eg as a 'forcing device for internal change' as well as benefiting engagement efforts.

[Sources: McKinsey & Co report, Climate risk and decarbonization — What every mining CEO needs to know; [registration required] The AFR 04/02/2020]

The BCA has reportedly written to members outlining plans to revise its climate policy

The Australian reports that the Business Council of Australia (BCA) has circulated a paper providing the details of a planned review of the BCA's climate policy to members. Reportedly the aim of the review is to deliver an updated, comprehensive energy and climate change policy package 'driven by science, technology and innovation to put Australia on a path to net zero emissions by 2050'.

In addition to formally supporting a zero emissions target for the economy by 2050, the paper also reportedly expresses support for putting a price on carbon.

According to The Australian, former Australian Energy Council CEO Matthew Warren will assist the BCA secretariat with the review.

The Australian also comments that the policy review follows criticism from BCA members concerning the BCA's climate stance.

[Note: Activist groups in Australia have targeted a number of organisations over their membership of groups whose climate stance is considered (by the activists) to be contrary to the goals of the Paris Agreement. For example, NAB, ANZ faced shareholder resolutions (coordinated by the ACCR) in 2019 calling on them to leave the BCA over its position on climate change. BHP faced a similar resolution. Recently, the ACCR has said that it will plans to lodge similar resolutions at Santos and Woodside in 2020 and to engage with other companies on the issue (see: Governance News 29/01/2020.) Further, a number of entities have reportedly elected to withdraw from the BCA (though it is not clear that the BCA's climate stance was the reason for their decisions to do so).]

[Sources: [registration required] The Australian 10/02/2020]

Independent MP Zali Steggal plans to introduce a UK style Climate Bill committing Australia to a net-zero target by 2050, the BCA has reportedly signaled support

Plans to introduce a private members Bill: Climate Change Bill

Independent MP Zali Steggal has released a statement — Questions and Answers on our Climate Change Bill — making the case for new climate change legislation and providing a high level outline of proposed reforms.

Broadly, the new Climate Change Bill (which Ms Steggal plans to introduce as a private members' Bill) would:

- commit Australia to a net-zero emissions target by 2050

- mandate a national climate risk assessment and a national adaptation program

- establish an independent Climate Change Commission

Why is the measure necessary? Ms Steggal says that the recent bushfires and drought have shown that 'climate change is an immediate challenge to Australia' with many Australians now feeling that their 'way of life and future is now under threat'. As such she says that there is an expectation in the community that the government act on climate change.

Modelled on similar UK legislation: Ms Steggal says that the Bill is modelled on legislation already in place elsewhere that has proven to be effective in lowering emissions and assisting countries to adapt to climate impacts. The 'legislation is tried and proven legislation that has worked in overseas jurisdictions like the United Kingdom, France and Ireland' the statement reads.

Why the proposed Bill does not include a carbon tax or emissions trading scheme: Ms Steggal says that the decision not to include measures to either introduce a carbon tax or an emissions trading scheme 'respects' the priorities the government took to the election. The Bill, she argues 'allows the government of the day to come up with policies depending on their priorities within a long-term bi-partisan goal' but under the 'close oversight' of an independent expert body.

Conscience vote: Ms Steggall says that she plans to call for a conscience vote on the Bill. The AFR suggests that though the government will likely move to block it, 'moderate' Liberals may opt to support it, splitting from their colleagues.

Industry response?

- **Business Council of Australia:** According to The AFR, The Business Council of Australia CEO Jennifer Westacott has signaled support. Ms Westacott is quoted as saying that the lack of progress to date needs to shift and that the measures appear a good starting point. 'We set the net zero emissions by 2050, that we set five-yearly carbon budgets. To me that’s a really important starting point she’s put forward. It’s a very, to me it’s kind of pretty basic that we start there. We have to get the how right because we’ve got to create those new jobs' Ms Westacott is quoted as saying.

- **Australian Industry Group:** The AFR quotes Innes Willox CEO of the Australian Industry Group as saying that the plan deserves 'close scrutiny' and that any new climate framework should consider the interaction between climate policy and trade competitiveness. 'Charting a course for Australia to net zero emissions by 2050 that is backed-up by a policy suite that also preserves industry competitiveness and social equity is a high priority' Ms Willox reportedly said.

[Source: Zali Steggal, statement: Questions and Answers on our Climate Change Bill; [registration required] The AFR 07/02/2020; 11/02/2020]

Only three countries have provided their updated climate plans in line Paris Agreement deadline to do so

The Australian reports that of the 194 governments that signed the Paris Agreement in 2015, only three: the Marshall Islands, Suriname and Norway have provided updated climate plans by the February 9 deadline (written into the Paris Agreement).

- According to the Australian, Norway has committed to reducing emissions by at least 50% (and towards 55%) by 2030 compared with 1990 levels

- Suriname has reportedly set a renewable energy target of 35% by 2030 and is seeking $US696m ($1.03bn) for climate measures.

- The Marshall Islands, has reportedly set a target to halve greenhouse gas (GHG) emissions between 2010 and 2030 with a view to achieving net-zero GHG emissions by 2050 (or earlier if possible). Reportedly, its emissions peaked in 2019.

According to the Australian, it's expected that other nations will update their plans over the course of the year.

Australia? According to The Australian, Energy Minister Angus Taylor has said that Australia is on target to meet its obligations under both the Kyoto second round and the 2030 Paris Agreement. The most recent estimates released by the federal Department of the Environment are that Australia will overachieve on both its 2020 and 2030 targets.

However, the Federal Opposition has reportedly criticised the government for including carry over credits from the Kyoto process in its 2020 and 2030 emissions calculations. Deputy Labor leader Richard Marles has also reportedly the government's claim that Australia is on track to meet its Paris target

[Source: [registration reuqired] The Australian 11/02/2020}

In Brief | Climate change litigation is now a real risk: The AFR reports that Chancellor of the University of Western Australia (and former Chief Justice of the High Court) Robert French has cautioned Australian governments, big business and regulators of the escalating risk of climate litigation and changing societal attitudes

[Source: [registration required] The AFR 05/02/2020]

In Brief | Corporate Australia supports urgent action on climate change? The Australian reports that support for action on the issue appears to be gaining traction in the business community with both Telstra CEO Andy Penn and Mirvac CEO Susan Lloyed-Hurwitz separately, speaking out/outlining their own organisation's plans around climate risk

[Source: [registration required] The Australian 07/02/2020]

Other Developments

RBNZ has announced the release of a new external whistleblower policy: current/former employees of RBNZ regulated entities will now be able to directly report misconduct to the RBNZ

The Reserve Bank of New Zealand (RBNZ) has announced the release of a 'streamlined' external whistleblowing policy.

Key Point: Under the policy, individuals currently or formerly employed by insurers, banks or non-bank deposit takers regulated by the RBNZ who have witnessed or become aware of misconduct — eg criminal offences; breach of a legal obligation; dishonest/unethical behaviour by an individual — within their organisation will now be able report it directly to the RBNZ via a designated email address and phone number.

The RBNZ said that potential whistleblowers should refer to their own organisation's internal whistleblowing policy before making a report to the RBNZ. 'If this option is not available, potential whistleblowers should contact the Reserve Bank directly' the statement reads.

[Sources: RBNZ media release 10/02/2020; Whistleblowing policy page]

Insolvency and Restructuring

The Combating Illegal Phoenixing Bill passed both houses on 5 February

The Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019 passed both houses on 5 February with some (Senate) amendments.

Amendments: The amendments will require that an independent review is undertaken 'as soon as practicable' in five years time to review the operation of the amendments made in the Senate to Schedule 1 (new phoenixing offences), Schedule 3 (anticipated GST liabilities) and Schedule 4 (retention of tax refunds).

Timing — some key points to note

- **New phoenixing offences**: The changes are set to come into effect the day after Royal Assent.
- **New accountability measures for directors:** Changes to prevent directors from improperly backdating resignations or ceasing to be a director when this would leave the company with no directors will take effect 12 months after Royal Assent.
- **GST estimates and director penalties:** The changes to enable the Commissioner to collect estimates of anticipated GST liabilities and make company directors **personally liable** for their company's GST liabilities in certain circumstances will take effect the first day of the quarter following Royal Assent.
- **Retention of tax refunds**: Changes authorising the Commissioner to retain tax refunds where a taxpayer has failed to lodge a return or provide other information to the Commissioner that may affect the amount the Commissioner refunds will take effect from the first day of the quarter following Royal Assent.

[Sources: Treasury Laws Amendment (Combating Illegal Phoenixing) Bill 2019]

In Brief | 'Shadow director' sentenced to nine years imprisonment for fraud and insolvent trading: Former Kleenmaid group director Andrew Young was found to be acting as a shadow director and sentenced to nine years' imprisonment after being convicted of 19 offences arising out of the collapse of the Kleenmaid group of companies. ASIC says that the case demonstrates that 'shadow directors can still be liable for breaches of the laws relating to directors' duties, even though they were never formally appointed as a director of the company, if they act as a director or give instructions to the appointed directors on how they should act'

[Sources: ASIC media release 10/02/2020; [registration required] The AFR 09/02/2020]

Corporate Governance Theory and Principles

In Brief | The Stanford Rock Center for Corporate Governance has released a guide to understanding key corporate governance concepts drawing together links to relevant papers and research findings on governance issues

[Source: The Stanford Rock Center for Corporate Governance, Core Concepts: Principles of Corporate Governance]