Governance News

COVID-19 Special Edition

1 July 2020

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COVID-19 Developments

COVID-19 Recovery: More stimulus needed? Grattan Institute report outlines how Australian government's should transition to a 'with-COVID world'

The Grattan Institute has released a report - Grattan Institute Report: The recovery book – what Australian Governments Should do Now – making recommendations for how state and federal governments should transition from the 'rescue' phase of the COVID-19 response, to 'recovery' phase. That is, how governments should approach: relaxing social distancing restrictions; winding back and/or adapting emergency support measures; and rebooting the economy (including through supporting spending with stimulus) ahead of the October budgets.

Some Key Recommendations

The report includes a summary of recommendations at p4. Some key recommendations to note include the following.

- Long-term reforms (eg industrial relations reforms and skills policy changes) should be put on hold for six months in order to enable the government to focus on more immediate issues.
- Additional stimulus: $70-90 billion in additional stimulus should be deployed to support the COVID-19 economic recovery. Stimulus should be spent on measures aimed at 'restoring economic activity' (eg smaller 'shovel ready' projects) with a focus on and lowering the unemployment rate to 5% by 2022.
- The report advocates a gradual winding back/reassessment and adaption of support measures including JobKeeper. In the case of JobKeeper, the report recommends that the scheme should be: a) ended early for businesses no longer in need of the support and extended for three months to businesses still in financial need; b) extended to include university staff, temporary migrants and short term casuals; and c) lowered for part time workers. The report also advocates that the Coronavirus supplement should be gradually wound back, with JobSeeker payments increased permanently by $100 per week and rent assistance lifted by 40%.
- Superannuation guarantee: The report recommends that access to the early released of superannuation scheme should be 'tightened'. The report also recommends that the government 'abandon' legislated increases in superannuation contributions.

[Sources: Grattan Institute media release 28/06/2020; Grattan Institute Report: The recovery book – what Australian Governments Should do Now; The Conversation 29/06/2020]

Boards and Directors

Calls for EU laws to 'embed sustainability into the duties of those at the top of the company'

BankTrack has announced that it has signed a letter (with 44 other organisations) welcoming the EU Commission's plans to 'legislate on sustainable corporate governance'. BankTrack's announcement flags two areas where the group seeks stronger laws.

- directors duties: 'embed sustainability into the duties of those at the top of the company, including setting targets, to ensure directors move away from short-termism and towards greater accountability'; and
- new due diligence requirements: require all companies, to conduct 'proper checks' that their business is 'not causing or contributing to the degradation of human rights or the environment'.

[Source: BankTrack's media release 30/06/2020]

In Brief | COVID-19: WEF considers that the pandemic has underlined the value of integrating ESG into the governance, strategy and operations of companies and has released a six point guidance plan to assist boards in this process

[Sources: WEF media release 24/06/2020; WEF white paper: Integrated Corporate Governance: A Practical Guide to Stakeholder Capitalism for Boards of Directors]

Remuneration

The disclosure of CEO pay ratios has not had the impact expected? Equilar has released its findings on the impact of 'say on pay' resolutions and CEO pay ratio disclosure on executive compensation

Equilar has released its analysis of the impact of 'say on pay' resolutions and CEO pay ratio disclosure on executive compensation at America's largest companies (ie 500 largest US companies by revenue).

Equilar's findings on say on pay resolutions are based on five years of data (2016-2019). The findings on CEO pay ratios is based on three years of data (2019-2020).

Investors appear to be getting progressively less satisfied

Overall, Equilar found that while executive pay packages continue to be approved by the majority of investors at the majority of companies, and while approval rates remain fairly high, the level of support is trending downwards and the number of companies at which 'say on pay' resolutions do not receive sufficient approval to be carried has increased (if only by a small amount).

- Approval rates on 'say on pay' resolutions are trending down: Equilar found that over the past five years, the level of investor support for non-binding resolutions to approve executive compensation packages has decreased. The approval rate was 95+% at 47.8% of companies in 2016. In 2020, this has decreased to 28.1%.
- Having said this, the approval rate for 'say on pay' resolutions remains fairly high. Say on pay resolutions at 86.9% of companies this year, still received 80% (or more) support. Of this group, resolutions at 42.2% of companies received 90-95% support. Equilar comments that 80% is the minimum threshold that Glass Lewis requires a resolution to receive in order for the company to avoid additional scrutiny of executive pay in the following year.
- The proportion of companies at which say on pay resolutions received less than 80% support has increased over the past five years from 10.8% in 2016 to 12.3% in 2020.

CEO pay ratio disclosure – inconclusive what impact it is having now and too early to tell what impact fuller disclosure may have in future

Equilar comments that at this stage, disclosure of CEO pay ratios does not seem to be having the impact expected. The data on whether lower CEO pay ratios translate into higher approval rates for say on pay proposals (and therefore higher levels of investor satisfaction with executive compensation) was ultimately found to be inconclusive. 'There's enough variance in the data to say it's inconclusive as to whether lower CEO Pay Ratios help improve a company's Say on Pay voting support' Equilar writes.

Equilar suggests a number of reasons for the lack of impact. One being that institutional shareholders do not factor CEO pay ratio data into their say on pay voting recommendations.

However, Equilar suggests that with increased interest in seeing 'more robust' disclosure around CEO pay ratios and how companies 'tell their stories', the impact may become clearer.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 24/06/2020]

Institutional Investors and Stewardship

HESTA sets net zero by 2050 emissions target, the move has been welcomed by the RIAA

HESTA has announced the release of a Climate Change Transition Plan aimed at aligning the funds actions and portfolio with the goals of the Paris Agreement.

HESTA CEO Debby Blakey summed up the purpose of the plan as outlining 'how we're going to manage climate risk, align our actions to a below two degrees world and support the transition to a low carbon economy.'

Details

The plan commits HESTA to:

- reducing 'the absolute carbon emissions in its investment portfolio by 33% by 2030' and net zero by 2050 in line with the goals of the Paris Agreement;
- setting carbon reduction targets for the HESTA investment portfolio
- investing in 'opportunities arising from the low carbon transition'
- engaging with 'material holdings and managers to address medium term transition risks and opportunities'
- report progress against its emissions reduction targets on an annual basis.

HESTA says that the plan will be informed by ongoing research and 'developments in investment practice'.

Rationale

HESTA's statement gives two reasons for the roll out of the transition plan.

1. **The need to take urgent action to manage the financial risk that climate change poses to HESTA's investment portfolio:** Ms Blakey said that 'Climate change presents a financial risk to the HESTA investment portfolio and the world in which our members will retire. An urgent response is required and the actions within the Climate Change Transition Plan have been thoughtfully and carefully designed to provide an effective and tangible response'. She added that HESTA is confident that the plan will 'deliver strong, competitive, long-term returns for HESTA members'.
2. **Member expectations:** Ms Blakey said 'We know our members in health and community services care deeply about climate change and that's why we're committed to sustained, long-term action to transition our investment portfolio for a low-carbon future.'

Ms Blakey also comments that the cost of failing to act will be greater than taking action.

> 'If efforts to improve the current trajectory of global warming are not successful, then we can expect an increase in the severity and frequency of damage from the physical impacts of climate change. There is no doubt that the social, environmental and economic cost of inaction is going to be far greater than the cost of responding to climate change', Ms Blakey said.

The RIAA has welcomed HESTA's announcement

In a short statement, the Responsible Investment Association of Australasia (RIAA) welcomed HESTA's announcement. The statement comments that 'HESTA has read the tea leaves on the enormous risks that inaction on climate change poses to our economy and member returns' adding that the move is indicative of a larger shift in the financial service sector towards committing to align business strategy/actions with the goals of the Paris Agreement.

[Source: HESTA media release 26/06/2020; RIAA announcement 26/06/2020]

BlackRock votes against the reelection of the Chair, four directors and the remuneration policy at AB Volvo (partially) on climate grounds

Following the AB Volvo AGM on 18 June, BlackRock issued a voting bulletin explaining its decision to vote against several board endorsed resolutions.

BlackRock said it voted against resolutions to re-elect four directors, the Chair and to approve the remuneration policy for the following three reasons.

1. **Insufficient progress on climate related risk reporting.** BlackRock writes that despite the fact that 'climate risk is indeed considered a strategic risk and is built into decision-making across the organization, from product planning to R&D spend', the company's current reporting contains 'no detail on oversight or its strategy to mitigate the impact of climate risk on its business'. On this basis, BlackRock regards the company's climate risk disclosures as falling below expectations for a company 'exposed to significant material climate risks'. BlackRock says that it's expectation is that Volvo's disclosure would more explicitly align with the TCFD recommendations than it does currently, and that it will 'look for' enhanced reporting next year.
2. **BlackRock also considers that concerns raised previously (BlackRock voted against the remuneration report at the 2019 AGM) about the structure of executive remuneration were not addressed.** In particular, BlackRock identifies two issues with the remuneration structure 'warranted a vote against management'.
   - **Too short a timeframe:** BlackRock considers that that the long term incentive plan, which measured performance over three years and one year, did not measure performance over a sufficiently long period and provided no explanation as to why this was justified. BlackRock considers that long term incentive plans should measure performance over three years and five years, and where they do not do so, should explain why.
   - **Performance hurdles were not announced at the outset of the plan**, with no explanation as to why.
3. **BlackRock also considered two of the four directors to be over-boarded**, which it considers raises 'substantial concerns about their ability to exercise sufficient oversight on Volvo's board'.
   - Matti Alahuhta holds (in addition to her role at Volvo) the role of Chair at Outotec Oyj and is also a non-executive director at Kone Oyj and ABB Ltd.
   - Martina Merz holds (in addition to her role at Volvo) the role of CEO at ThyssenKrupp AG is also a non-executive director at SAF-HOLLAND SA.

   [Source: BlackRock Voting Bulleting AB Volvo 18/06/2020]

Meetings and Proxy Advisers

Climate resolution at Japanese lender Mizuho Financial Group receives 35% support

A shareholder resolution, coordinated by Kiko Network, calling for Mizuho Financial Group (MFG) to disclose its plan for aligning its business strategy/investments with the goals of the Paris Agreement (including metrics and targets) has received 35% support (according to Kiko Network) at the 25 June AGM. The resolution was not carried.

Kiko Network says that this resolution is the first of its kind ever to be filed with a Japanese company.

Why the bank was targeted

Kiko Network gave two reasons for targeting MFG.

1. Kiko Network considers MFG to be 'uniquely exposed to climate risk' because it is the 'world's largest private lender to coal developers'
2. Kiko Network also considers MFG's climate disclosure to be inadequate. 'Investors are currently in the dark. They have a right to know if the company has a comprehensive plan to demonstrate how this risk will be managed and how the company will meet the goals of the Paris Agreement' Kiko Network states.

The MFG board did not support the resolution

The resolution was not supported by the MFG board primarily on the basis that the board considered that the objectives of the resolution are already being achieved through current reporting (MFG already discloses a TCFD report that includes Paris aligned metrics).

The MFG board also questioned Kiko's assertion that it is the world's largest lender to coal developers. The board maintains that the claim is based on a single factually flawed report.

The resolution reportedly had the support of both ISS and Glass Lewis.

Result welcomed by Kiko Network

In a media statement welcoming the result (35% support) Kiko Network said that it sends a 'powerful message to Mizuho, and to corporate Japan as a whole, that corporate business needs a plan to align with the Paris Climate Agreement'.

The statement also reiterates Kiko Network's assertion that the bank's current strategy and current disclosure are inadequate and cautions that continued failure to take more action on the issue could lead to 'financial ruin' for the company. The statement reads,

> 'The road to financial ruin is already paved with companies which have failed to adapt to the accelerating transition to a zero carbon world. With billions of dollars at stake, this proposal indicates the extent to which investors are getting serious. It's time for Mizuho to take serious steps'.
>
> [Sources: Kiko Network media releases: 16/03/2020; 25/06/2020; Mizuho meeting materials; Glass Lewis blog post 17/06/2020; Reuters 23/06/2020; Responsible Investor 26/06/2020; Japan Times 25/06/2020]

Formal commitment to work to deliver value to all stakeholders: Shareholders overwhelmingly support the Danone board's decision to become the first listed company to adopt the Entreprise a Mission model

Danone has announced that shareholders have overwhelmingly endorsed (99% support) the board's decision for the company to adopt the 'Entreprise à Mission' model. Danone says it is the first listed company to do so.

Adopting the model means that Danone will have to incorporate the Entreprise a Mission framework into its articles of association and also implement governance oversight arrangements (including the establishment of an independent ten member Mission Committee) to monitor progress towards its ESG goals.

Rationale – consistent with the company's long-standing stated environmental, social and governance objectives, and it makes good business sense

Danone says that the move, 'adds to the trajectory that inspired its largest subsidiary, Danone North America, to become the world's largest Public Benefit Corporation. It also propels Danone further down the path of achieving its ambition to become B Corp certified at global level'.

In addition, the company says that adopting the model makes good business sense. 'I am convinced that the more our business demonstrates that it is working for all its stakeholders, the more it will create value and be recognized for that' Danone Chair and CEO Emmanuel Faber said.

[Sources: Danone media releases 20/05/2020; 26/06/2020; Glass Lewis Blog 22/06/2020]

Podcast | ISS has released a podcast highlighting trends from the US 2020 annual meeting season including the continued shareholder focus on ESG issues and executive remuneration (among other issues)

[Source: ISS podcast: Key highlights from the 2020 US Proxy Season]

Regulators

Webinar: Discussion of the differing approaches financial regulators take to the oversight of culture and non-financial risk in the financial services context

MinterEllison has released a webcast of a presentation from Professor Dimity Kingsford-Smith discussing the different approaches that the Australian Securities and Investments Commission (ASIC), the Australian Prudential Regulation Authority (APRA) and the UK's Financial Conduct Authority (FCA) take to oversight of culture and non-financial risk in the financial services context.

Among other things, Professor Kingsford-Smith observes that though culture may be a 'great diagnostic tool', it perhaps shouldn't be viewed as a 'prescription' in itself. Rather, she suggests that a focus on professionalism (as the FCA is doing) in the context of culture, which gives culture purpose (eg focus on doing the right thing by customers, delivering quality services etc) might be a better way forward.

The webinar also includes Professor Kingsford-Smith's responses to three audience questions on: board oversight of risk culture (and the blurring of management and board roles); what HR data boards should be seeing; and the interaction between remuneration and culture and whether cultural change is possible without making changes to remuneration.

The full recording can be accessed here.

In Brief | COVID-19 recovery: The June quarterly statement from the Council of Financial Regulators reiterates the Council's view that 'financial institutions, regulators and governments will need to continue to show flexibility in order to support the objectives of economic recovery, resilience of financial institutions, and fair household and business outcomes'

[Source: Council of Financial Regulators, Quarterly Statement by the Council of Financial Regulators – June 2020 24/06/2020]

Financial Services

Top Story | ASIC's appeal against the Wagyu and Shiraz responsible lending decision has failed

Case note: Australian Securities and Investments Commission v Westpac Banking Corporation [2020] FCAFC 111

Key Takeouts

- By a 2:1 majority, the Full Federal Court dismissed ASIC's appeal against the 'Wagyu and Shiraz' decision and ordered the regulator to pay the bank's costs.
- In separate judgements their Honours Justice Gleeson and Justice Lee held that there is no statutory basis for ASIC's 'prescriptive' interpretation of responsible lending obligations. 'The language of the Act does not support the degree of prescription contended for by ASIC' Justice Gleeson states.
- In a short statement acknowledging the judgment, ASIC Commissioner Sean Hughes said that the regulator will 'review each of the separate decisions carefully – including what additional measures or clarification may be required to support compliance with the Credit Act.' More particularly, ASIC flagged that it will 'carefully consider the Court's determination and any revisions that are necessary to our [responsible lending] guidance'. ASIC released updated responsible lending guidance (RG 209) in December 2019.
- Further appeal or a push for law reform? ASIC's statement makes no mention of a possible further appeal or of any plans to push for the tightening of responsible lending obligations in the Act (as Commissioner Hayne suggested might be considered pending the outcome of this decision). In light of economic impact of the COVID-19 pandemic, and the focus on enabling banks to keep up the supply of credit to prospective borrowers, and in light of the government's decision to prioritise reforms that directly support recovery efforts, it seems unlikely that ASIC will push for law reform at present (even were the regulator to determine that this is desirable).
- In a short statement Westpac acknowledged the Court's decision, but made no further comment.

Overview

On 13 August 2019, Justice Nye Perram handed down his landmark decision on the boundaries of responsible lending obligations in Australian Securities and Investments Commission v Westpac Banking Corporation (Liability Trial) [2019] FCA 1244 (Wagyu and Shiraz case). Our summary of the decision is here.

The case was brought by the Australian Securities and Investments Commission (ASIC) as a test case, to provide 'judicial clarification of a cornerstone legal obligation on lenders'.

In dismissing ASIC's case, Justice Perram held that a lender 'may do what it wants in the assessment process' and is not obliged under the responsible lending provisions of the National Consumer Credit Protection Act 2009 (Act), to take into account a prospective borrower's actual/declared expenses when assessing whether a loan will be unsuitable to consumers. ASIC appealed against the decision and, in December 2019, released responsible lending guidance (RG 209), notwithstanding that the outcome of the appeal was yet to be determined.

On 26 June, the Full Federal Court handed down its decision. In separate judgements Justice Lee and Justice Gleeson dismissed ASIC's appeal with costs.

ASIC's case

The National Consumer Credit Protection Act 2009 (Cth) (NCCP Act) requires lenders to assess whether loans will be unsuitable for consumers.

Broadly, ASIC argued that Justice Perram erred in failing to find that the manner in which Westpac assessed the unsuitability of 261,987 home loan applications between December 2011 and March 2015 breached these obligations. For reference, ASIC's notice of appeal is here.

ASIC's argument had two parts:

1. Unsuitability assessment – the proper construction of responsible lending obligations

Broadly, ASIC argued that the method used by Westpac – an automated decision system which used a range of rules, the serviceability rule, the 70% rule and the HEM benchmark - to assess the unsuitability of the loans did not assess the consumer's likely ability to comply with their financial obligations as required under s131(2)(a), because each consumer's actual living expenses were not taken into account as (ASIC alleged) was required under the Act.

Section 131(2)(a) requires that lenders consider two questions (the 131(2)(a) questions) when assessing whether a loan will be unsuitable:

1. Is it likely that the consumer will be unable to comply with the consumer's financial obligations under the contract? and
2. Is it likely that the consumer will only be able to comply with the consumer's financial obligations under the contract with substantial hardship?

ASIC argued that 'upon a proper construction of the provisions of Div 3 of Pt 3-2 of the Act, the primary judge ought to have held that Westpac did not make an assessment of the s 131(2)(a) Questions and accordingly did not make the unsuitability assessment required by s 128 of the Act'.

2. Interest only loans

For loans with interest only periods, ASIC argued that Justice Perram erred in concluding that the lender made an assessment of unsuitability within the meaning of s131(2)(a) because in order to have met this requirement, ASIC considered it necessary for Westpac to have taken into account the higher repayments at the end of the interest-only period (which Westpac did not do).

The decision

Proper construction of the legislation

The Court confirmed that there is no statutory requirement to necessarily take into account a prospective borrower's actual living expenses

Gleeson and Lee JJ held separately, that as a matter of statutory construction, there is no obligation for lenders to take into account a prospective borrower's actual living expenses as ASIC contended.

Justice Gleeson states,

> 'The Act cannot be construed to require Westpac to consider the total figure for declared living expenses in each case for the purpose of assessing the consumer's likely ability to meet their financial obligations...
>
> 'The language of the Act does not support the degree of prescription contended for by ASIC. Rather, the Act leaves it open to the licensee to decide:
>
> (1) what inquiries it will make under s 130(1)(a) and (b), provided that those inquiries are reasonable;
>
> (2) what steps it will take to verify the consumer's financial situation under s 130(1)(c), provided that those inquiries are reasonable; and
>
> (3) how it will use the results of its inquiries and verification to make the unsuitability assessment, provided that it in fact assesses whether the contract will be relevantly unsuitable for the particular consumer and noting that the licensee is otherwise motivated by the Act to refrain from entering into an unsuitable contract.'

Similarly, Justice Lee disagreed with ASIC's interpretation of the obligations.

> 'The difficulty with this argument [ASIC's argument] is that the word "assessment", as used in ss 128(c) and 129, does not seem to me to incorporate the obligation for which ASIC contends. There is no textual requirement specifying how the assessment is to be undertaken, and indeed ASIC accepted that "it remains open to a licensee to choose how it conducts the assessment required"'

Justice Lee went on to state that,

> 'There is substance in Westpac’s submission that if, as ASIC accepted, what a lender did with the information obtained under s 130 was “legitimately up to the lender”, and not all information gathered needed to be used, how does one delineate the information to which Westpac must have regard, from information to which it need not have regard? Nothing in the text allows a licensee in the position of Westpac to know which specific parts of the information obtained must be used in the assessment to avoid incurring a civil penalty. This uncertainty is difficult to reconcile with a mandatory requirement, implied from the text, that in performing an assessment under s 129, Westpac must have specifically used (by “having regard to”) the consumer’s Declared Living Expenses…'
>
> I respectfully agree with the primary judge (see J[71]) that it does not follow that the statutory purpose can only be achieved by taking into account all information collected, regardless of its relevance or materiality to the assessment of unsuitability'.

No error in finding that Westpac did not contravene responsible lending obligations

At first instance, Justice Perram found that as a question of fact Westpac did take into account customer's actual living expenses through the application of the 70% rule (though there was no statutory requirement that the bank to do so).

Justice Lee did not 'consider the primary judge fell into error in dealing with the Declared Living Expenses issue'.

Justice Gleeson also agreed that primary judge did not err in 'concluding that Westpac asked and answered the s 131(2)(a) Questions and, accordingly, the primary judge was correct to conclude that ASIC’s case failed'.

The HEM benchmark

Their Honours Gleeson and Lee JJ, did not identify any issue with use of the Household Expenditure Benchmark as part of Westpac's process for assessing unsuitability.

Justice Gleeson accepted Westpac's evidence that its 'systems and processes were designed to ensure that a customer would meet their financial obligations to the bank by ensuring that the loan was not unsuitable for the customer and that the customer had the ability to service the loan without suffering substantial hardship'.

Justice Gleeson states,

> 'Westpac’s ADS sought to answer the s 131(2)(a) Questions most particularly by the Serviceability Rule. The application of the Rule required calculations of the individual consumer’s Discounted Monthly Income, Assessed Monthly Repayments and Outgo, and the identification of an HEM benchmark figure applicable to the consumer’s circumstances. It is not fairly described as an assessment “without regard to the circumstances of the individual concerned”, and it is plainly directed to the risk of the particular consumer being unable to meet their financial obligations under the proposed credit contract without significant hardship as measured by the HEM benchmark'.

Justice Lee states,

> 'This was an unusual case, being a case alleging a serious want of compliance with responsible lending norms, divorced from consideration of any facts about any specific consumers. It was Westpac’s job to assess suitability and although not determinative, for my part, it is far from intuitively odd that Westpac would focus on independent, objective data as represented by the HEM Benchmark and use the Declared Living Expenses in the way it did (through the use of the “70% Ratio Rule”).'

Interest only loans

At first instance, Justice Perram rejected ASIC's argument that Westpac breached the Act in the manner in which it answered the s 131(2)(a) Questions in the case of loans with interest only periods. His Honour held,

> 'Westpac’s legal obligation was to ask and answer the s 131(2)(a) Questions. The fact that it did so as if the loan did not involve an initial interest only period does not mean that it did not ask and answer those questions. ASIC alleges that Westpac contravened the Act in this way on 154,351 occasions across the same period as its first allegation (these loans are a subset of the 261,987 loans which figure in ASIC’s primary case). ASIC’s case on these loans fails too'.

Justice Gleeson, Justice Lee and Justice Middleton separately agreed with Justice Perram's approach.

(Possible) push for law reform?

The Financial Services Royal Commission's Final Report made no express recommendation to ban the use of the Household Expenditure Measure (HEM) or the use of other benchmarks to verify prospective borrowers’ ability to service a loan. However, Commissioner Hayne noted with approval the shift by industry away from using such benchmarks. 'I consider…steps taken by banks to strengthen their home lending practices and to reduce their reliance on the HEM – are being taken with a view to improving compliance with the responsible lending provisions of the NCCP Act'.

Noting the decision was then still pending, Commissioner Hayne added that should this interpretation of the content of the obligation be successfully challenged, that the law should be altered. 'If the court processes were to reveal some deficiency in the law's requirements to make reasonable inquiries about, and verify, the consumer's financial situation, amending legislation to fill in that gap should be enacted as soon as reasonably practicable'.

> [Note: For Commissioner Hayne's discussion of the use of benchmarks see: Financial Services Royal Commission Final Report, Volume 1 at p57-59. See also: FSRC Final Report: Lending implications]

ASIC's statement in response to the judgement makes no reference to either a possible further appeal, or to pushing for a tightening of obligations. Rather, ASIC Commissioner Sean Hughes said that the regulator will 'review each of the separate decisions carefully – including what additional measures or clarification may be required to support compliance with the Credit Act.' More particularly, ASIC flagged that it will 'carefully consider the Court's determination and any revisions that are necessary to our [responsible lending] guidance'. ASIC released updated responsible lending guidance (RG 209) in December 2019.

In light of economic impact of the COVID-19 pandemic, and the focus on enabling banks to keep up the supply of credit to prospective borrowers, and in light of the government's decision to prioritise reforms that directly support recovery efforts, it seems unlikely that ASIC will push for law reform at present (even were the regulator to determine that this is desirable).

> [Sources: ASIC media release 26/06/2020; Australian Securities and Investments Commission v Westpac Banking Corporation [2020] FCAFC 111; Westpac media release 26/06/2020]

COVID:19: ASIC has approved the temporary relaxation of some Banking Code requirements

The Australian Securities and Investments Commission (ASIC) has approved temporary changes to the Code of Banking Practice proposed by the Australian Banking Association (ABA), in light of the 'the extraordinary external environment caused by COVID-19'.

The ABA says that the changes reflect both the fact that: a) banks may be temporarily unable to always meet 'strict' timing requirements for communicating with customers because of the impact of COVID-19; and b) to ensure the continued flow of credit to small business.

Timing: The changes will apply during the period 1 July 2020 to 1 March 2021.

Details

The temporary changes are included in a 'special note' to the Code which has been incorporated into a revised version of the Banking Code of Conduct.

- **Relaxation of timeframes to communicate with customers/provide documents to customers (in some instances):** Changes include temporarily relaxing 'strict' timing requirements for notices and communications in paragraphs 101 (b) and (c), 102, 148, 164, 205, and 206 of the Code provided that the lender has made 'good faith efforts to comply'. The Special Note states that 'substantive obligations' in each of these paragraphs and all other requirements in the Code are unchanged.

- **Complaints:** During the time the changes operate banks are still required to: a) acknowledge complaints and advise that there may be delays to the usual notification during the complaints handling process; and b) 'despite anything in this Special Note'*, inform consumers within 45 days of receiving a complaint (or other time specified in ASIC Regulatory Guide 165 according to the type of complaint) of their rights to apply for external dispute resolution if the complaint has not been resolved.

> [Note: *This appears to be a reference to paragraph 206 of the Code which sets out the actions code subscribers will take in the event that a complaint has not been resolved within 45 days and the timeframes in which they will do so. Para 206 is included in the list of paragraphs where timing requirements have been relaxed.]

Provision of new loans or increased loans to small businesses

The Special Note states:

> 'The effects of COVID-19 may also be relevant to our obligations under the Code when considering providing new or increased loans to your small business. These effects include the inherent difficulties in making predictions for matters such as the pace of economic recovery, and in assessing your ability to service such loans. In these circumstances, our obligation to engage with you in a fair, reasonable and ethical manner, and to exercise the care and skill of a diligent and prudent banker, will necessarily be informed by these matters and the effects of COVID-19 generally'.

The ABA says that the change is needed to ensure the continued 'flow of credit to small and family businesses during current economic challenges, by recognising that the assessment of business loan applications presents unique challenges in this environment, including the difficulties in making predictions for matters such as the pace of economic recovery, and in assessing business' ability to service loans'. .

[Sources: ASIC Corporations (Approval of Variation of March 2020 Banking Code of Practice) Instrument 2020/602; ABA media release 25/06/2020]

Cultural change is needed: Life Code Compliance Committee calls on (some) Code signatories to take their Code obligations seriously

The Life Code Compliance Committee (LCCC) has released its second annual report into compliance with the Life Insurance Code of Practice. The report covers the period 1 July 2018 to 30 June 2019.

A need for cultural change

The headline finding is that the Code is 'not yet part of the culture of all subscribers', some of whom the Committee considers, are failing to take compliance obligations and 'the Code's true purpose seriously'.

The report found that a number of Code subscribers, 'particularly the larger ones, do not appear to be aligning the norms and values of their organisation with the standards set out in the Code'.

This finding was based, in part, on the poor quality data submitted by Code signatories, as well as on the substantive findings relating to the volume of breaches and the number of complaints.

The Committee considers integration of the Code into the culture of organisations to be necessary to ensure Code commitments are prioritised and integrated into decision making at all levels of the organisation.

> 'Demonstrating compliance with the Code is not simply a case of ticking boxes or doing "just enough". It is about fully embracing the spirit of the Code by providing a high level of customer service. It also involves rigorous self-appraisal and a willingness to identify, remediate and learn from any Code breaches. None of this can be achieved without an organisational culture that values fairness, honesty and transparency, and where consumers' best interests are placed at the heart of all decision-making' the LCCC writes.

Committee Chair Ann Brown also reminded signatories that Code compliance is in their interests.

> 'Self-regulation is a privilege. With that privilege comes an obligation to ensure that appropriate mechanisms are in place to comply with the Code and report, via complete and accurate quantitative data, both internally and externally' Ms Brown states.

On this basis, the report includes a chapter (at p11 of the report) on the need for cultural change which the Committee says is intended to 'guide to promote a topdown organisational culture which aligns with the values in the Code, and where Code compliance is seen as a priority by everyone in the enterprise'.

Other improvement areas

In addition to the need for cultural change, the report identifies a number of specific improvement areas. These include:

- **A need to improve data reporting:** The report found that though data submissions were not 'deliberately deficient' the quality does 'indicate an unsatisfactory attitude by many subscribers' to their data collection and verification processes' which, the Committee considers, 'needs to be addressed to demonstrate effective compliance with Code standards and to allow the objectives of this annual Report to be achieved'.

- **A need to improve staff training and monitoring frameworks:** Though signatories reported that they are providing the necessary training and support to claims assessors and underwriters, consistent with their Code obligations, the report found that a large proportion of breaches were attributed to inadequate staff training, human error and/or a failure to follow correct processes and procedures. The Committee considers that this points to a need for insurers to strengthen training evaluation processes, 'particularly in relation to coverage and reinforcement of Code obligations'. The Committee states that 'robust training, oversight and compliance monitoring of staff is key to reduce the adverse consumer outcomes from breaches due to people related causes'.
- **A need to improve claims management processes:** The report found that the volume of claims-related complaints increased 52% and that there was a 'disappointing deterioration in overall claims handling turnaround times'. The Committee consider that both of these issues point to need for 'stronger claims management and communication processes whilst highlighting the potential benefits of a review of culture within subscriber organisations'.
- **A need to improve processes for recording and reporting breaches of the Code:** Based on the under-reporting of information concerning the timeframes for resolving complaints, the Committee suggests there is a need to improve processes for recording and reporting Code breaches.

[Sources: Life Insurance Code Committee media release 26/06/2020; 2018–19 Annual Industry Data and Compliance Report]

'Encouraging professional behaviour': The Tax practitioners board and the FPA have entered into an MoU to facilitate information sharing between the organisations, including sharing complaints information

The Tax Practitioner Board (TPB) and the Financial Planning Association of Australia (FPA) have entered into a memorandum of understanding (MoU) to facilitate information sharing between the two organisations about 'matters of mutual interest' eg compliance with the Code of Professional Conduct.

The MoU allows for the exchange of information between the two organisations on issues including: a) misconduct by registered tax practitioners; b) 'intelligence, operational matters and de-identified data trends'; and c) continuing professional education opportunities.

TPB Chair Ian Klug said that 'the purpose of this agreement and the others that will follow, is to make it clear that both organisations are committed to working collaboratively for the betterment of the tax profession.'

FPA Chair Dante De Gori said that 'The FPA has demonstrated a commitment to enforcing and holding members accountable to professional codes of ethics for over 25 years and we welcome the opportunity to work more closely with the TPB on encouraging professional behaviour for the protection of consumers.'

The first of many similar arrangements?

Mr Klug commented that ‘This is our first finalised MOU with a recognised professional association, but we expect more to come as we continue to work closely with other associations to develop similar agreements.' Mr Klug went on to say that several professional bodies have expressed interest.

[Source: TPB media release 25/06/2020]

COVID-19: APRA has asked superannuation funds to provide additional data to enable the regulator to monitor the impact of the pandemic on the super sector and on member outcomes

The Australian Prudential Regulation Authority (APRA) has launched a two-pronged COVID-19 Pandemic Data Collection (PDC) to enable the regulator to monitor the impact of the pandemic on the superannuation industry and on the 'outcomes being delivered to members'. In asking for this additional information, APRA acknowledged the pressure funds are under already, but said that it considers the data to be 'essential' in order to enable it to analyse the impact of COVID-19.

Details

The PDC is in two parts.

- **New monthly reporting** of information on: complaints, insurance, advice and 'operational resilience' (eg. changes in fraud risk profile, the number of external fraud incidents identified during the reporting period and the impact of COVID-19 on the ability of funds to carry out business critical activities).

  Submission dates: Funds are asked to provide their first report, which will cover the period April 2020 to June 2020, by 31 July. Thereafter, reports fall due on 15 business days after month end.

- **New quarterly reporting** of information on foreign currency exposure and hedging, member switching, early release of superannuation demographics and 'a one-off collection' of information on insurance cancellations relating to the Protecting Your Super reforms.

  Submission dates: Funds are asked to provide their first report by 31st July 2020. Going forward, reports will fall due 15 business days following the end of the quarter.

Further detail about the information to be submitted: APRA has provided excel templates explaining what data is required in more detail. These are available here.

How the data will be submitted: The PDC will be collected via D2A (the excel templates have only been provided to indicate what data is required). APRA will advise when funds are able to submit data, but expects that they will be able to do so from 20 July.

Publication of data

APRA has no plans to publish fund level data bit will publish industry level data on a monthly or quarterly basis.

Temporary measure only

APRA says that the PDC will remain in place until 'issues that are being faced by registrable superannuation licensees relating to the COVID-19 pandemic have abated'. A review of the PDC to assess whether it is still needed will occur in 'late September' 2020.

Opportunity to ask questions and provide feedback

APRA will hold a webinar in 'early' July to give RSEs an opportunity to ask questions about the PDC. Details about this will be made available shortly.

APRA has also invited funds to email feedback on the PDC. APRA comments, 'APRA understands that the PDC is at short notice on already constrained resources and that some funds may find it difficult to implement in the timeframes required. Please provide information on this in your feedback'.

[Sources: APRA media release 24/06/2020; Letter to registrable superannuation entity licensees - COVID-19 Pandemic Data Collection request; [registration required] The Australian 24/06/2020]

APRA has published its first update to the MySuper Heatmap

Key Takeouts

- In the six months since the heat map was introduced, superannuation fees/costs have fallen for 42% of MySuper members resulting in significant savings (estimated aggregate savings of $110 million a year).
- However, a number of funds continue to charge high fees and APRA has written to the trustees of the funds in question to put them 'squarely on notice' that the regulator is 'seriously considering its response to their failure to swiftly address these issues. Any response may include formal enforcement action.'

The Australian Prudential Regulation Authority (APRA) has published its first update to the MySuper Heatmap to reflect updated data on fees and costs through to 29 May 2020. Accompanying the heatmap, APRA released an insights paper analysing and providing insights into the reasons behind the changes.

Three 'insights' into the data

The Insights Paper makes three observations:

- Overall, fees and costs have decreased in the six months since the introduction of the heatmap delivering significant savings (estimated $110 million per annum in savings) to members. 42% of MySuper member accounts have lower disclosed fees/costs.
- Administration fees remain 'largely unchanged' (with some exceptions)
- The products found to be charging 'relatively high fees and costs' originally (December 2019) continue to do so, 'and hence have more work to do to bring their fees and costs down'.

Announcing the update, APRA Deputy Chair Helen Rowell said that it's 'pleasing to see that millions of members are already paying less in total fees, especially given the additional challenges and operational costs funds have faced in relation to COVID-19.' Ms Rowell also welcomed the fact that 'some funds and products have closed, and transferred their members to better performing products'.

However, APRA says that a number of funds continue to 'underperform' on fees.

Formal enforcement action being considered: APRA Deputy Chair Helen Rowell said that APRA is writing to the trustees of 'more than a dozen MySuper products that continue to seriously underperform on fees. The letter will put these trustees squarely on notice that APRA is seriously considering its response to their failure to swiftly address these issues. Any response may include formal enforcement action.'

Investment performance and sustainability sections not yet updated: The update to the heatmap does not include updates to the sections on investment performance and sustainability on the basis that 'material changes in those areas are expected to take longer to manifest'.

Next update

- A 'complete refresh' of the heatmap will be published 'later this year': APRA states that 'APRA acknowledges that recent financial market volatility will impact investment performance and lead to changes in the outcomes for MySuper members. APRA will consider this when it publishes a complete refresh of the Heatmap later this year'.
- Expansion of the heatmap: APRA says that it is continuing to 'advance plans' to extend the heatmap to cover Choice products and insurance products.

[Sources: APRA media release 30/06/2020; APRA Insights Paper: MySuper Product Heatmap – Fees and costs update and other observations]

COVID-19: So far funds have paid out $17.1bn under the government's early release of superannuation scheme

The Australian Prudential Regulation Authority (APRA) has released industry-level and fund-level data on the early release of superannuation scheme for applications received during the period 20 April (inception of the scheme) to 21 June 2020.

- Total payments made since the inception of the scheme have taken an average of 3.3 business days to process, with 95% of payments made within five business days.
- Over the week to 21 June, superannuation funds made payments to 154,000 members worth a total of $1.2 billion.
- Since the inception of the scheme, 2.3 million payments worth $17.1 billion have been paid.
- The average payment made over the period since inception is $7,492.

[Source: APRA media release 29/06/2020]

Increasing the superannuation guarantee to 12% would continue to take pressure off the Age Pension according to ASFA report

The Association of Superannuation Funds Australia (ASFA) has released a report, which ASFA will provide as a supplementary submission to the Retirement Income Review, into the benefits of the compulsory superannuation system.

Separately, ASFA has released a report calling for the superannuation guarantee rate to be lifted to 12% in light of the impact the early release of superannuation scheme has had on retirement savings.

[Note: Retirement Income Review is due to provide its final report to the government by June 2020.]

Some Key Findings

- **The compulsory superannuation scheme has resulted in individuals having higher retirement savings than they otherwise would have.**
  - Overall, ASFA estimates that Australian households now have $500 billion in savings that they otherwise would not have saved.
  - For low income workers (workers in the bottom 20% of households by income), the scheme has meant that they have saved $35 billion (which they otherwise would not have had). The report notes that because of the introduction of compulsory superannuation, low income workers also 'have a broad asset base outside of the family home and bank accounts' which they otherwise would not have had.
- **Living standards in retirement:**
  - The scheme was also found to enable low income workers to have a higher standard of living in retirement than would be possible were they dependent on the Age Pension alone.
  - ASFA expects that by 2050, 50% of retirees will be 'able to afford expenditure in retirement at or above the ASFA Comfortable Retirement Standard benchmark' (this is presently, $44,200 per year for a single person and $62,400 per year for a couple).
- **Gender gap:** The report found that women are likely to retire with less savings than their male peers because of the difference in earnings. ASFA estimates a woman entering the workforce today and earning median wages throughout her career will likely retire with $445,000 ($100,000 less than her male peers) and $100,000 below the amount needed to meet ASFA's Comfortable Retirement Standard). ASFA suggests two measures to help address this: 1) providing compulsory superannuation for paid parental leave; and 2) removing the $450 per month income threshold for superannuation payments.
- **Compulsory superannuation will continue to take the pressure off the Age Pension and keep government spending relatively low:** The report suggests that if the superannuation guarantee rate is increased to 12%, government expenditure on the Age Pension will be able to remain low at around 2.6% of GDP through to 2054/2055. The report observes that in contrast, OECD expenditure on public pensions averages 8.8% of GDP and is expected to increase to 9.4% by 2050.
- **Compulsory superannuation has broader positive impacts on the Australian economy:** The report identifies a number of benefits including that the superannuation system provides a 'stable source of funding for domestic infrastructure projects' eg APRA-regulated superannuation funds currently invest up to $71 billion in domestic infrastructure, including 'green' infrastructure.

Call to lift the superannuation guarantee to 12%

In a separate report, ASFA estimates that 2.5 million people are likely to access their retirement savings before 30 June, with as many again potentially doing so after 1 July under the government's early release of superannuation scheme.

The report argues that the erosion of retirement balances through the scheme 'reinforces the need to move as soon as possible to a Superannuation Guarantee rate of 12 per cent in order to provide adequate retirement savings for individuals and to provide financial security for individuals in times of extreme financial need'.

[Sources: ASFA media release 27/06/2020; ASFA report: The benefits of Australia's compulsory superannuation system; ASFA report: Experience to date with the early release of superannuation; The AFR 30/06/2020]

Delivering 'greater flexibility' to boost retirement savings: Superannuation Legislation Amendment (2020 Measures No 1) Regulations 2020 are now in force

Assistant Minister for Financial Services, Superannuation and Financial Technology Jane Hume has announced that Regulations - Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020 - are now in force that will mean from 1 July 2020 people will have more flexibility in boosting their retirement savings as they near retirement.

Specifically the changes mean that from 1 July:

- People aged 65 and 66 will be able to make voluntary concessional and non-concessional contributions to the superannuation without meeting the 'work test' (ie there will no longer be a requirement to work a minimum of 40 hours during a 30 day period each financial year in order to keep making voluntary superannuation contributions).
- People up to age 75 (rather than 70) will be able to receive spouse contributions. The explanatory statement says that this will align contribution rules for individuals aged 65 and 66 with those for individuals aged under 65 years.

Ms Hume noted that Treasury Laws Amendment (More Flexibility Superannuation) Bill 2020.which is currently before the House of Representatives, will allow people aged 65 and 66 to make up to three years of non-concessional contributions under the bring-forward rule.

Ms Hume commented, 'The Morrison Government is conscious that systems must be sufficiently flexible to allow individuals to save for their retirement, through life's ups and downs. These changes will allow more Australians to boost their savings as they near their retirement.'

[Sources: Assistant Minister for Financial Services, Superannuation and Financial Technology Jane Hume media release 30/06/2020; Superannuation Legislation Amendment (2020 Measures No. 1) Regulations 2020]

COVID-19: FASEA consults on giving planners and advisers three months extra time to complete CPD requirements - draft instrument released

The Financial Adviser Standards and Ethics Authority (FASEA) has released a draft legislative instrument - Corporations (Relevant Providers Continuing Professional Development Standard) Determination (Amendment) 2020 – for (a short) consultation. The due date for submissions is 1 July 2020.

The purpose is to provide relief from CPD requirements for financial planners and financial advisers whose ability to complete CPD requirements has been impacted by the COVID-19 pandemic.

Broadly, the instrument proposes to allow planners and advisers whose CPD year includes 18 March 2020 (the date of the commencement of the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020) an extra three months to complete their CPD requirements for the CPD year.

[Sources: FASEA media release 29/06/2020; Corporations (Relevant Providers Continuing Professional Development Standard) Determination (Amendment) 2020; Explanatory Statement]

Monitoring progress post-Hayne: Representatives from the financial advice sector appeared before the House Committee on 30 June

Representatives from the financial advice sector - the Association of Financial Advisers Financial Planning Association of Australia; Mortgage and Finance Association of Australia; Finance Brokers Association of Australia; Finance Adviser Standards and Ethics Authority; Industry Fund Services; Australian Finance Group; the Stockbrokers and Financial Advisers Association; AMP; and IOOF - appeared (via videoconference) before the House of Representatives Standing Committee on 30 June as part of the Committee's ongoing review of the four major banks and other financial institutions.

Announcing the hearing, Committee Chair Tim Wilson said that the purpose of the hearing was to check the progress industry has made to raise standards in the wake of the Hayne Commission.

> 'It is essential that Australians can trust that financial advisers and mortgage brokers are always acting in their client's best interests, rather than the interests of the adviser or any third parties. Given the widespread misconduct in the financial advice sector identified by the Hayne Royal Commission, it is important that financial advisers, mortgage brokers, and those in the industry are held accountable to ensure that they are making the crucial improvements needed to restore trust in the sector' Mr Wilson said.

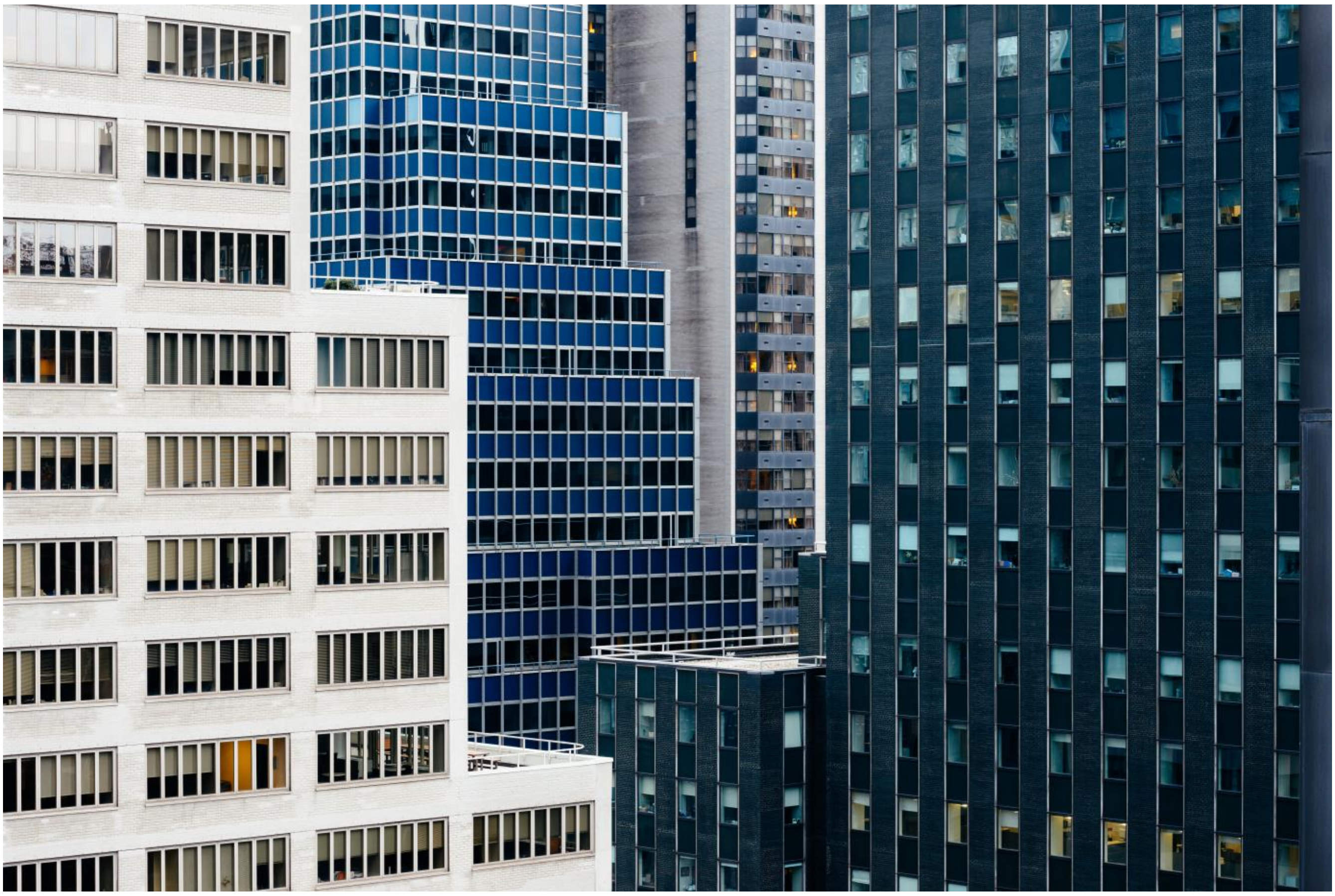
The transcripts of the hearings will be accessible here, once released.

Reportedly, the Committee heard that both the scale of reform and the speed at which it is being introduced is causing anxiety in the industry.

[Sources: House of Representatives Standing Committee media release 28/06/2020; Public hearing program; Bega District News 30/06/2020]

In Brief | The General Insurance Code Governance Committee has released a guidance - Guidance Note 2 Significant breach obligations – General Insurance Code of Practice – outlining the Committee's Code compliance expectations

[Source: Guidance Note for Code Subscribers on approach & expectations regarding significant breaches]



Risk Management

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CLIMATE RISK

Central banks and prudential regulators have cautioned that the economic cost of failing to act on climate could result in significant economic losses

The Network for Greening the Financial System (NGFS), a group of sixty six central banks and prudential regulators from around the world including the Reserve Bank of Australia, has released several reports and guidance documents to assist central banks to integrate consideration of climate-related risks into their work.

The NGFS has released:

- A set of climate scenarios - NGFS Climate Scenarios for central banks and supervisors - mapping out the risks and impacts of climate change
- Guide to climate scenario analysis for central banks and supervisors which provides practical advice on using scenario analysis to assess climate risks to the economy and financial system.
- A report - Climate Change and Monetary Policy Initial takeaways - looking at the possible impacts of climate change on monetary policy
- A report - The Macroeconomic and Financial Stability Impacts of Climate Change Research Priorities identifying future research priorities.

Economic cost of failing to step up climate action could be significant

Among other things, NGFS scenarios flag that the cost of failing to keep warming below 2 degrees by 2070, by taking urgent (and additional) policy action, could be significant.

In the 'Hot House World' scenario, which assumes that no new climate policies are implemented, and the world continues on its current trajectory, it is estimated that emissions will increase until 2080, resulting in a three degrees (or more) increase in warming. According to NGFS modelling, this could result in a 25% loss in GDP by 2100.

In contrast, in the 'orderly' scenario, which assumes that the net zero emissions target is achieved before 2070 (which gives a 67% chance of limiting global warming to below two degrees) the economic cost is predicted to be much lower (4% GDP loss by the end of the century).

[Sources: NGFS media release 24/06/2020; NGFS Climate Scenarios for central banks and supervisors; Guide to climate scenario analysis for central banks and supervisors; Climate Change and Monetary Policy Initial takeaways; The Macroeconomic and Financial Stability Impacts of Climate Change Research Priorities; The Guardian 26/06/2020]

Response

In a statement acknowledging the release of the climate scenarios, Shadow Minister for Climate Change and Energy Mark Butler called for the government to do more to address climate change. 'Scientists have already warned that Scott Morrison's inadequate climate targets will lead to over 3 degrees of warming, with catastrophic impacts for our environment, health and society' Mr Butler said. Mr Butler called on the government to 'listen to the scientists on climate change' as it has done during the COVID-19 pandemic.

[Source: [accessed via LexisNexis Capital Monitor] Shadow Minister for Climate Change and Energy Mark Butler media release 26/06/2020]

The AEC calls for a firm commitment to net-zero emissions by 2050

The Australian Energy Council (AEC) has called for a firm commitment to the net-zero emissions by 2050 target and for the government to align its long-term climate policy to this explicit goal to provide certainty.

The AEC states,

> 'Consistent with the international negotiations from whence it came, the Paris Agreement text is often qualified and unspecific. Nevertheless, drawing from these statements above, it seems unavoidable that Australia, as a rich nation, is expected to achieve net zero emissions by 2050 and thereafter as part of its Paris Agreement obligations.
>
> Like many similar organisations, the AEC considers that the Australian economy is better served if it now explicitly recognises this inevitability, ie it should name the elephant so it can get started on eating it'.

The AEC goes on to say that it considers it to be 'inevitable that the world needs to ultimately balance carbon between emissions and sequestration, and that 2050 is an appropriate target for this goal in Australia. And, once we get consensus around this goal, we can begin the great challenge of achieving it'.

[Source: AEC article 25/06/2020]

bp has announced it has reached an agreement to sell off its petrochemicals business for $5 billion

bp has announced it has reached agreement sell of its petrochemicals business to manufacturing company INEOS for $5 billion. The sale agreement includes the whole of bp's aromatic and acetyls businesses which consists of 15 sites spread across America, Europe and Asia. As part of the agreement, the 1700 bp staff are expected to transfer to INEOS.

bp says that the sale will both 'strengthen bp's balance sheet' and deliver its target for agreed divestments - $15bn in divestments by mid-2021 – a year earlier than planned.

Announcing the news, bp CEO Bernard Looney said the agreement is 'another deliberate step in building a bp that can compete and succeed through the energy transition'.

The news follows bp's statement earlier in the month that the company was reviewing its portfolio and capital management plans in light of its ambition to 'become a net zero company by 2050 or sooner' and in light of the fact that it considers that the COVID-19 pandemic will both: lead to potentially weaker demand for energy over a sustained period; and 'accelerate the pace of transition to a lower carbon economy and energy system'.

Founder and Chair of INEOS, Sir Jim Ratcliffe said that the company is 'delighted to acquire these top-class businesses from BP, extending the INEOS position in global petrochemicals and providing great scope for expansion and integration with our existing business.'

The Australian reports that bp's share price increased following news of the agreement.

[Sources: bp media release 29/06/2020; INEOS media release 29/06/2020; [registration required] The Australian 29/06/2020]

AGL commits to five point climate transition plan, the ACCR says that it is unlikely to head off investor pressure close coal fired power stations

AGL has announced its commitment to a five point climate transition plan (climate statement) that 'will shape AGL's portfolio management, supply and technology investment, and customer offerings'.

Details

Broadly, under the plan AGL commits to five actions:

1. 'Offer customers the option of carbon neutral prices across all our products':
   – from1 July all of AGL's electricity plans will 'always offer a certified carbon neutral option'
   – by the end of FY21, a carbon neutral option will be available on all AGL products (ie electricity, gas or telecommunications products).
2. 'Support the evolution of Australia's voluntary carbon markets' by exploring how AGL can participate in 'mechanisms to generate and supply carbon credits'.
3. Continue to invest in new sources of electricity supply.
4. 'Responsibly transition our energy portfolio. We will continue to run our coal-fired power stations responsibly, and support our people and communities during the transition'. On this point, AGL CEO Brett Redman said 'Not only do our coal and gas fired generators ensure Australia's lights remain on, they provide the financial strength for AGL to progress the transition'.
5. AGL also says that it will 'openly and transparently track our progress through our annual report and hold ourselves accountable through our remuneration structures'. From FY21, AGL's Long Term Incentive Plan for 'key management personnel' will include carbon transition metrics. These metrics will include: a) the emissions intensity of AGL's controlled generation fleet; b) the proportion of generation from renewable sources; and 3) the share of total customer sales coming from green energy and other lower carbon products and services.

Investor pressure to close coal fired power stations likely to continue?

In a statement, the Australasian Centre for Corporate Responsibility (ACCR) dismissed AGL's announcement as 'nothing new' and predicted that investor pressure to bring forward the closure of coal fired power stations will continue.

ACCR director of climate and environment Dan Gocher said,

> 'The urgency of ending Australia's addiction to coal fired power is not reflected in this statement. The window of community and investor acceptability of burning fossil fuels to produce electricity is rapidly closing. While AGL's intention to reward executives to reduce emissions is welcome, and consistent with ACCR's asks of other heavy polluters, executives must not be rewarded for business as usual. Specifically, executives should not be rewarded for simply following through on commitments already announced, like closing the Liddell coal-fired power station in 2023'.

[Sources: AGL media release 30/06/2020; [registration required] The AFR 30/06/2020]

In Brief | The BCA's submission in response to the government's Technology Investment Roadmap Discussion Paper, supports setting a net-zero emissions by 2050 target and putting a price on carbon

[Source: BCA submission: Technology Investment Roadmap Discussion Paper]

In Brief | The Bank of England has publicly released its own climate disclosure for the first time. The report sets out the bank's approach to managing climate related risk including: the governance structures/processes in place to manage climate related financial risk; the bank's approach to setting climate strategy and monitoring implementation; and the bank's approach to setting targets and tracking progress against them

[Source: BoE media release 18/06/2020]

In Brief | The AFR reports that superannuation fund, Australian Ethical has sold down its investment in Marsh and McLennan, over Marsh's ongoing involvement in the Adani thermal coal mine

[Source: [registration required] The AFR 30/06/2020]

CYBERSECURITY, TECHNOLOGY AND PRIVACY

Webinar: Optimising your organisation's technology in a post COVID-19 world

MinterEllison has released an article summarising the key insights from a recent panel discussion on a range of 'tech topics for the post-COVID-19 world'. Speakers included technology consultants from MinterEllison Technology Consulting (formerly ITNewcom) and legal firm MinterEllisonRuddWatts.

The full webinar can be viewed here. The summary of the key points is here.

COVID-19: OAIC has released guidance to assist industry to comply with privacy obligations when collecting information for contact tracing

The Office of the Australian Information Commissioner (OAIC) has released guidance - Guidance for businesses collecting personal information for contact tracing – to assist businesses that are required to collect contact information about customers and visitors to their premises by State and Territory Directions and Orders to comply with their privacy obligations.

The brief guidance includes the following five key points.

1. businesses should only collect the personal information required under the Direction or Order
2. businesses should notify individuals in line with Australian Privacy Principle 5 (APP 5before collecting the personal information (eg by 'displaying a prominent notice' on the business website and at the premises)
3. businesses should securely store contact information once collected. It's suggested that 'It may be best to record the personal information you collect for contact tracing purposes in a separate record (rather than recording all details in your booking system'.
4. businesses should only provide contact information to relevant health authorities who undertake contact tracing activities, when requested to do so.
5. businesses should destroy any contact information collected once there is no requirement under an Order or Direction to keep it. Where there is no set period specifying how long contact information should be kept, the information should be destroyed 'after a reasonable period of time.'

[Source: OAIC Guidance: Guidance for businesses collecting personal information for contact tracing]

Australia's 'largest ever investment in cybersecurity': $1.35 billion Cyber Enhanced Situational Awareness and Response (CESAR) package announced

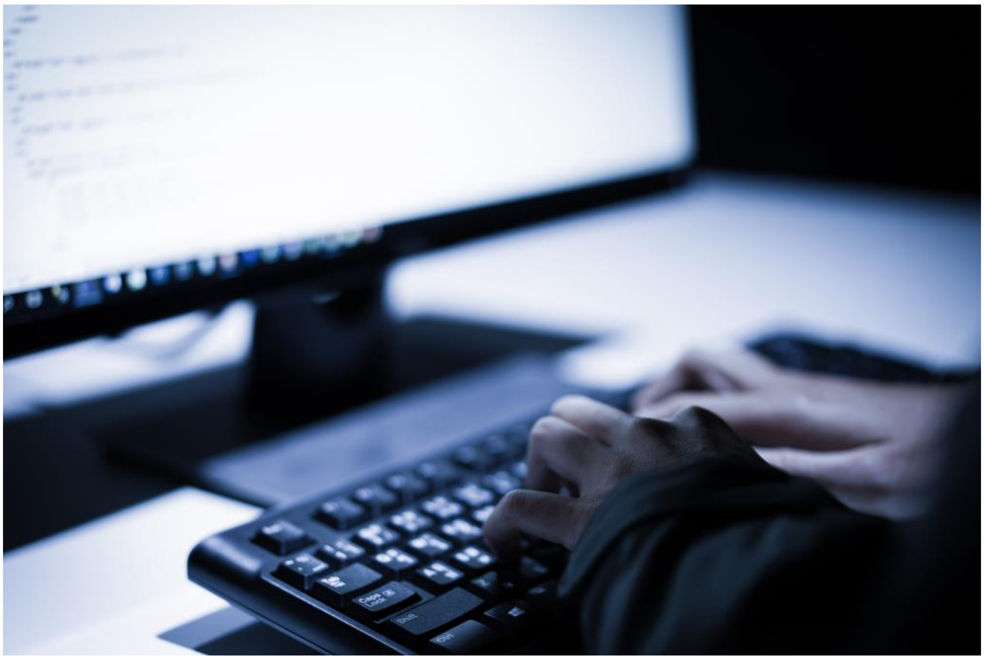
Prime Minister Scott Morrison has announced a $1.35 billion cybersecurity package – the Cyber Enhanced Situational Awareness and Response (CESAR) package.

Mr Morrison said that the new funding will mean that Australia will be able to 'identify more cyber threats, disrupt more foreign cybercriminals, build more partnerships with industry and government and protect more Australians' in light of the increasing frequency, scale and sophistication of malicious cyber activity against Australia.

Mr Morrison said that 'The Federal Government's top priority is protecting our nation's economy, national security and sovereignty. Malicious cyber activity undermines that.'

Details

Funding will be spread over the next decade and be targeted at enhancing 'the cyber security capabilities and assistance provided to Australians through the Australian Signals Directorate (ASD) and the Australian Cyber Security Centre'.



Measures include the following.

- funding 'new strategic mitigations and active disruption options' to enable the ASD and major telecommunications providers to block known malicious websites and computer viruses 'at speed' ($12+ million commitment)
- funding to 'enhance' the ASD's ability to 'disrupt cybercrime offshore, taking the fight to foreign criminals that seek to target Australians, and providing assistance to federal, state and territory law enforcement agencies' ($31+ million commitment)
- funding to create a new cyber threat-sharing platform which will enable 'industry and government to share intelligence about malicious cyber activity, and block emerging threats in near real-time' ($35+ million commitment)

In addition, the plan includes funding of a number of measures intended to builder cyber capability. These include:

- funding to enable the ASD to expand its data science and intelligence capabilities ($118+ million commitment) and funding for new research laboratories ($20+ million commitment)
- $470 million to fund the expansion of Australia's cyber security workforce (500 new jobs will be created within the ASD)
- $62 million 'to deliver a national situational awareness capability' to better enable the ASD to understand and respond to cyber threats on a national scale. This will include 'informing vulnerable sectors of the economy about threats most likely to impact them, coupled with tailored advice and assistance about how to mitigate cyber threats'.

The Prime Minister said that 'remaining details' of the package will be detailed in the 2020 Cyber Security Strategy.

Response

The AFR reports that the industry response to the package is mixed - some members of the cybersecurity sector have reportedly expressed cautious optimism while others are more sceptical.

[Source: Prime Minister Scott Morrison media release 30/06/2020; [registration required] The AFR 30/06/2020]

In Brief | Swiss Re white paper calls for insurers to consider reporting publicly on 'cyber-resilience': Broadly, the report argues that on balance, the benefits of public disclosure outweigh the potential downsides, not least because an industry-led approach may head off the prospect of potentially 'vague, unreasonable or onerous' future regulation

[Sources: Swiss Re media release 11/05/2020; Swiss Re whitepaper: Transparency Imperative or Security Nightmare? Cyber Resilience "ESG" Reporting]

In Brief | Open banking: The CBA, Westpac and the ABA have issued statements welcoming the start of open banking. The ABA underlined banks' commitment to privacy protections – 'Customers can be assured that they will always be in control of how and when they share their data' ABA CEO Anna Bligh said

[Sources: CBA media release 01/07/2020; ABA media release 01/07/2020; Westpac media release 01/07/2020]

Insolvency and Restructuring

In Brief | COVID-19: ASIC's latest insolvency update includes statistics on the number of companies entering into external administration. ASIC says that there 'continues to be a material decrease in insolvency activity, April 2020 (down 33%) and to 31 May (down 45%) on the same months in the prior year'

[Source: ASIC Corporate Insolvency Update - Issue 16 16/06/2020]

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