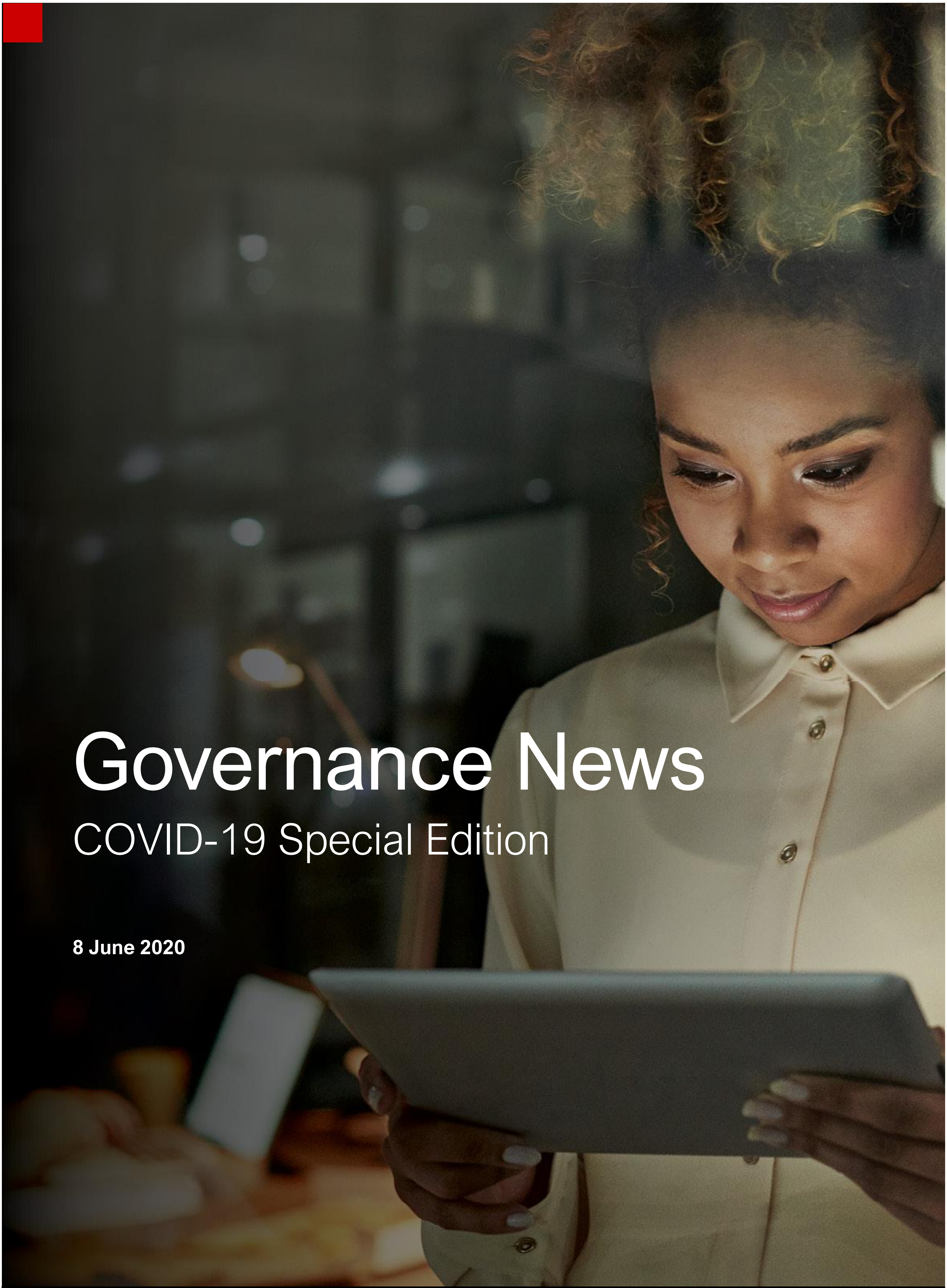

Governance News

COVID-19 Special Edition

8 June 2020

Contents

COVID-19 Key Developments

COVID-19: How to build resilience and continuity in your technology supply chain

MinterEllison has released an article providing expert insights into the issues businesses should factor into their business continuity planning as we head into the COVID-19 recovery phase. The full text of the article is available on the MinterEllison website here.

COVID-19: How project assessment frameworks can help build sustainable infrastructure

MinterEllison has released an article discussing the growing trend towards incorporating ESG considerations into project assessment and investment decision-making in the context of public and private infrastructure planning. The full text of the article is available on the MinterEllison website here.

Boards and Directors

The IoD has formally launched a new Centre for Corporate Governance to conduct research into key the key challenges facing boards

The UK Institute of Directors (IoD) has announced the formal launch of a new Centre – the Centre for Corporate Governance – which has been commissioned by the IoD to conduct research into key challenges facing boards such as sustainability issues and the impact of new/emerging technologies on boardroom practice.

The work of the Centre will be overseen by an advisory board comprised of business/governance leaders including Marcus Stuttard (London Stock Exchange Group); Amra Balic (BlackRock); David Styles (Financial Reporting Council) and Iris Chiu (University College London) among others.

The IoD says that the Centre has already started work 'as a hub for discussion of corporate governance and related environmental, social and governance (ESG) issues fostering an inclusive and multi-disciplinary approach'.

[Sources: IoD media releases 29/06/2020; 30/06/2020]

Diversity

The Australian chapter of the 30% club expands its focus to the ASX 201-300

Key Takeout

- The Australian chapter of the 30% club has called on ASX 201-300 companies to meet a 30% female board representation target by the end of 2021

The Australian chapter of the 30% club has partnered with KPMG on a report analysing the gender diversity of ASX 300 boards.

ASX 200 boards

The report observes that larger organisations are leading the way on diversity with the average proportion of female directors above 30% at ASX 100 companies (the average is 31.8%), dropping to 30.7% across the ASX 200.

The report comments that for ASX 200 companies, the challenge is now more to keep the momentum and for companies to begin to treat the 30% threshold as a minimum requirement, rather than as a stretch target.

ASX 300 boards

Female board representation is currently 28.4% (averaged across the ASX 300), and 22% (on average) at ASX 201-300 companies. Looking at this more closely:

- 25% ASX 201-300 companies have 30% female representation
- 23% of ASX 201-300 companies have all male boards
- 35% of ASX 201-300 companies have boards including only one woman

Diversity by industry sector: Within the ASX 201-299, four sectors currently average 30% or more women. They are: consumer staples (57%); utilities (50%); health care (44%) and financials (40%).

In all other sectors, the proportion of female board members is below the 28.4% ASX 300 average.

The sectors with the lowest proportion of female directors are: IT and industrials (both 0%) and materials (10%).

30% target for ASX 300 companies

To accelerate the rate of progress, the 30% has set ASX 201-300 companies a target of 30% female board representation by 2021.

Seven ways smaller companies can accelerate progress

To assist companies in reaching the target, the report identifies seven 'key learnings' for what ASX 201-300 companies can do to increase female board representation.

These are as follows.

1. Chairs should lead the way and set the tone on the issue by making diversity a board priority and a priority for their organisation.
2. ASX 201-300 companies should accept the financial and non-financial benefits of diversity (as larger organisations increasingly have done)
3. ASX 201-300 companies looking to grow should follow the lead of larger organisations on the issue and explicitly commit to diversity within their organisation
4. ASX 201-300 companies should adjust their expectations when considering prospective board candidates. Though executive line experience is desirable, it should not be treated as a non-negotiable requirement.
5. Boards should broaden their focus to adhere to the 30% female representation target across the C suite

6. Prospective female board members are attracted to boards with proven diversity track records. ASX 201-300 companies should be 'conscious of the external signals being sent' to prospective female candidates and look to demonstrate their acceptance of the value that diverse candidates offer.
7. Companies should set stretch targets on diversity as leading ASX companies have done.

[Sources: KPMG media release 07/07/2020; Full text KPMG and 30% club joint report: Building Gender Diversity on ASX 300 Boards - Seven Learnings from the ASX 200]

An opportunity to accelerate change: 30% club sets three new diversity targets for FTSE 350 companies to reach by 2023

The UK chapter of the 30% club has added three new diversity targets for UK companies to reach by 20-2023.

1. All new FTSE 350 Chair appointments to go to women between now and 2023
2. All FTSE 350 boards to include 30%+ women, and a minimum of one person of colour by 2023
3. All FTSE 35- executive committees to include 30%+ women and at least one person of colour by 2023

Why the new targets are being introduced now

Announcing the new targets, global Chair of the 30% club Ann Cairns said that though there has been good progress on gender diversity over the last decade, for example over the past ten years the proportion of women on FTSE boards has increased from 9.5% to 32% on average, there is still work to do in that the leadership of UK companies still does not reflect the wider population.

Ms Cairns states, 'leadership of our business world still doesn't reflect our wider population and we are not harnessing the wonderful talents of people who think differently, have different backgrounds, cultures, ethnicities and many other differences'.

Ms Cairns goes on to say that the new targets have been set in the context of both the 30% the COVID-19 pandemic and the recent black lives matter protests, which could, she suggests, be catalysts for companies to address endemic inequality and to rethink and reset priorities.

Ms Cairns states,

> 'COVID-19 pandemic is an opportunity to accelerate change The Covid-19 pandemic, coupled with anti-racist protests that have been held in cities across the UK over the last month, in solidarity with US campaigners for Black Lives Matter – and renewed focus on race relations globally – are creating much needed focus on the inequalities in our societies. The glass ceiling is still pervasive and women of colour face some of the greatest hurdles of all. It's a time of change, a time of acceleration, where we can build a much better world for everyone. That's why the 30% Club is looking beyond our original goals and reaching for equality. We want to be clear that we believe in a business world which includes ALL women and being explicit about women of colour in our UK goals. The pandemic is bringing about a global reset in business and society and now is the moment for CEOs to make brave and bold decisions which will really move the dial on diversity and inclusion. The companies that do so will emerge in the future with the best and brightest management teams sourced from a deep pool of diverse talent'.

[Source: 30% club media release (UK Chapter) 01/07/2020]

Equilar says California's board gender quota law has accelerated the pace of progress on board gender diversity in that state, but suggests that similar laws may be unnecessary in certain other states given the existing rate of progress

Equilar has released analysis of the impact of California's board gender quota law – SB 826 – on board diversity in Californian-based Russell 3000 companies, and on Russell 3000 companies more broadly.

Equilar found that the law has driven rapid progress on the issue.

For example:

- In California, the number of women on Californian based Russell 3000 boards increased from 480 in Q4 2019 to 964 in Q1 2020. The proportion of all male boards fell from 21.7% in Q4 2019 to 1.5% in Q1 2020
- Across the US, the number of companies with all male boards decreased from 18.8% of boards in Q4 2019 to 7.6% in Q1 2020 (driven largely by the increase in the number of female appointments in California).

Equilar's view, based on its analysis of gender diversity data over time, is that the law has only served to accelerate an existing trend, being driven by institutional investors and consultants, towards appointing female directors by imposing a hard deadline on boards to act.

Noting that other US states are considering following California's example, Equilar looked at current board diversity levels across the US. Equilar found that levels of board diversity differed substantially in different states. It therefore may not be necessary for states to necessarily follow California's example, light of the existing trend, in order to reach 'complete gender parity' by 2030.

[Source: Equilar blog 30/06/2020]

In Brief | A diversity policy is no longer enough? The WSJ reports that the community now expects companies to follow through on their statements in support of BLM protests/condemning racism, by taking concrete, measurable steps to actually improve their organisational diversity

[Source: [registration required] The WSJ 26/06/2020]

Remuneration

Trends in executive remuneration, board composition and workload: Joint Aon & Governance Institute report

Key Takeouts

- The report found that the majority of ASX 300 organisations did not increase board fees in FY2019.
- The median salary increase (fixed remuneration) for CEOs in ASX 300 companies was 1.8%. The increase was slightly larger for 'senior executives' at 2.4%.
- COVID-19? A review of 226 organisations found that many have flagged their intention to reduce Chair and non-executive director fees and to reduce CEO fixed remunation

The Governance Institute and Aon have jointly released a report - Board and Executive Remuneration Report 2020 – presenting the results of analysis of emerging trends in executive remuneration including steps taken in response to COVID-19.

About the survey

The report is based on data from 433 organisations from across a range of sectors. The majority of organisations were publicly listed companies (74%), not for profit organisations (12%) and privately owned companies (8%). The remainder were subsidiaries, government business enterprises, and unlisted public companies.

Board remuneration, workload and composition

Board fees

- The report found that the majority of ASX 300 organisations did not increase board fees in FY2019.
- For the slightly over one third of companies that did increase fees, the median increase for both chair and members was 4%.
- Aon and the Governance Institute observe that some large financial institutions reduced board fees in the wake of 'highly publicised corporate scandals and instances of malpractice'.

Average CEO remuneration

- Target total remuneration for CEOs across the sample was $2,756,299 (on average).
- Fixed remuneration was on average $1,944,225
- Short-term incentive was on average $963,589
- Long term incentive was $1,316,340
- Target annual remuneration was on average $1,892,324

For CEOs at companies outside the ASX 150, the total target amount was below this average, decreasing in line with ASX ranking. For CEOs of ASX 251-300 companies, the average total target remuneration amount was 54% of the overall average at $1,489,854 and 23% of the total target remuneration for CEOs in ASX 1-50 companies.

Executive remuneration: relatively muted increases

- The median salary increase (fixed remuneration) for CEOs in ASX 300 companies was 1.8%. The increase was slightly larger for 'senior executives' at 2.4%.
- The report observes that increases in CEO were lower in larger organisations. In ASX 51-100 companies the median increase was 0.8%, dropping to 0.2% at ASX 50 companies.

Board workload

- The median number of board meetings at ASX 300 companies was 11 in FY 19.
- In the construction and financial services sectors, the median number of meetings was higher at 13 board meetings.
- Increased workload for remuneration and audit committees: The number of audit committee meetings and separately the remuneration committee meetings held annually was five (median number) but the frequency was much higher at some large financial institutions. One financial institution held 19 audit meetings. Separately, a large financial institution held 22 remuneration meetings. Commenting on this, Aon Partner and Head of Corporate Governance Services Laura Wanlass attributed the higher meeting frequency to the increased focus on ESG in the executive remuneration context. 'As investors look for more ESG context in the executive remuneration governance process, continued pressure on remuneration committees for increased meeting frequency and scope of coverage could be expected' Ms Wanlass said.

Board composition

- Overall female representation on boards across all sectors was 29%.
- The proportion was highest in the retail trade sector at 40%.
- Only five of the sixteen sectors surveyed were observed to have less than the median proportion of female board members. These were: energy and utilities (27% female board representation), food and fast moving consumer goods (FMCG) (25% female board representation), construction (25% female board representation); administrative and support services (22% female board representation) and metals and mining (20% female board representation).

Indications of the impact of COVID-19 on executive remuneration

Based on Aon's analysis of recent ASX disclosures of 226 organisations, many (but predominantly organisations outside the ASX 300) have said that they intend to reduce board fees, Chair fees and CEO fixed remuneration because of COVID-19.

Of the group that have indicated their intention to reduce remuneration: 87% said they will substantially decrease (the average decrease is 51%) Chair and non-executive director fees and 72% intend to reduce CEO fixed remuneration by an average of 37%.

Challenges for boards going forward

- Governance Institute Megan Motto observed that the rapidly changing and uncertain economic environment is already impacting the way in which individual organisations are thinking about incentives in the context of the pandemic and its impact. 'The economic fallout of COVID-19 is impacting boardrooms across Australia as many businesses take drastic measures including widespread pay cuts and layoffs…There is clearly no one-size-fits-all solution when it comes to managing the impacts of a pandemic on executive remuneration.'
- Aon observes that setting long term and short term goals for 2021 will be challenging for companies in light of the uncertainty around the recovery timeframe. Aon Partner and Head of Rewards Solutions, Pacific, Simon Kennedy said that requires companies to engage early on the issue with investors and to potentially rethink existing incentives. Mr Kennedy also said that clear communication about the rationale for remuneration decisions is essential. 'As boards will look to balance multiple stakeholder perspectives in determining executive incentive outcomes in FY20, proactive and cogent communication of the rationale used in making this determination to investors, shareholders and the public will be extremely crucial' Mr Kennedy said.

[Sources: Governance Institute media release 03/07/2020; [registration required] Full text report: Aon and Governance Institute Board and Executive Remuneration Report July 2020]

Disclosure and Reporting

COVID-19: ASIC focus areas for 30 June financial reports

The Australian Securities and Investments Commission (ASIC) has provided guidance on its focus areas for financial reporting for the year ending 30 June 2020 in light of the COVID-19 pandemic.

Investors need to be kept informed

ASIC Chair James Shipton said that the key message for reporting entities is that investors need to be kept informed.

> 'In the current environment, the quality of financial reports and related disclosures is more important than ever for investors and to maintain confident and informed markets. Entities with businesses adversely affected by the COVID-19 pandemic should focus on the reporting of asset values and financial position. Investors will expect clear disclosure about the impacts on an entity's businesses, any risks and uncertainties, key assumptions, management strategies and future prospects.'

ASIC states that despite uncertainties connected with the pandemic, ASIC's expectation is that the 'assumptions underlying estimates and assessments' in financial reports are 'reasonable and supportable' and 'realistic and not overly optimistic or pessimistic'.

> 'Useful and meaningful disclosures about the business impacts and potential uncertainties will be vital. Uncertainties may lead to a wider range of valid judgements on asset values and other estimates. Disclosures in the financial report about uncertainties, key assumptions and sensitivity analysis will be important to investors' ASIC states.

Focus areas

ASIC suggests that directors, preparers and auditors should focus on the following areas:

- Asset values (eg impairment of non-financial assets, values of property assets, expected credit losses on loans and receivables)
- Provisions (ie provision for onerous contracts, financial guarantees given and restructuring)
- Solvency and going concern assessments
- Subsequent events: ASIC suggests that directors, preparers and auditors should review events/information received after year end but before the completion of the final report, to determine whether they affect assets, liabilities, income or expenses at year-end.
- Disclosures in the financial report and Operating and Financial Review (OFR).

In addition, ASIC directs directors, preparers and auditors to the guidance on financial reports and audits in the context of COVID-19 in the frequently asked questions sections of the ASIC website here.

Scope of ASIC's review

ASIC plans to review the full year financial reports of about 200 larger listed entities and other public interest entities focusing on those adversely affected by the current conditions as well as the adequacy of disclosure by those whose businesses have been positively affected.

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

COVID-19: US investors call on SEC to mandate disclosure of social and governance issues

A group of 90+ investors called Americans for Financial Reform has called on the Securities and Exchange Commission to mandate disclosure of certain financial and 'non-financial risks' including worker protection measures and supply chain risks (among others), to help investors to understand and the impact the pandemic has had/is having on the companies in which they're investing and how the companies are responding to the crisis.

It's necessary that SEC step in, the group argues, because of the inadequacy of current disclosure. The group writes that investors are currently reliant on news reports 'to try to understand how the crisis is impacting companies in their portfolios and how those companies are responding'.

Details

The group asks that SEC require companies to provide 'comprehensive' information about the following issues.

- Human capital management: worker protection and support measures
  - Protection measures: The group is asking that the SEC mandate disclosure of: a) workplace COVID-19 Prevention and Control Plans; b) disclosure of policies around contract tracing and response plans; c) disclosure of how the company is complying with quarantine orders and public health orders; and d) disclosure of policies for protecting employees who raise concerns about workplace health and safety (eg whistleblower protections).
  - Support measures: The group is also asking the SEC to mandate disclosure of a range of issues concerning their workers (both employees and contractors). The group is asking for mandatory disclosure of: a) employee leave arrangements (ie whether the company is paying sick leave to quarantined workers/sick workers); and b) health insurance coverage information (eg how many workers are covered); information about what protections/benefits are being provided to part time and/or temporary employees, independent contractors and subcontractors.
- Supply chain payment times information: The group asks that companies be required to disclose whether they are up to date on payments to their vendors on the basis that 'timely and prompt payments to suppliers will help retain suppliers' workforces and ensure that a stable supply chain is in place for business operations going forward'.
- Financial impact of pandemic on cash flows and balance sheets as well as any steps implemented to preserve liquidity
- Executive Compensation: The group is asking that companies be required to disclose the rationale for any 'material modifications' eg changes to performance targets, to executive compensation being made in response to the pandemic

Ultimately, the letter argues that the pandemic serves to underline the relevance and importance of social and governance issues, in enabling investors to properly assess company performance. The letter states,

> 'Prior to the onset of COVID-19, it was often argued that human rights, worker protection and supply chain matters were moral issues not relevant to a company's financial performance. As millions of workers are laid off and supply chains unravel, the pandemic has proven that view wrong. Businesses that protect workers and consumers will be better positioned to continue operations and respond to consumer demand throughout the pandemic. The disclosures outlined above will provide investors with important information to help them understand how COVID-19 is impacting the companies they are invested in'.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 01/07/2020]

COVID-19: Time for companies to expand their reporting beyond direct employees: The ACCR has called on companies to review and improve their reporting on the whole of their labour force

Call to review subcontracting arrangements: The Australasian Centre for Corporate Responsibility (ACCR) has called on companies to review the use of subcontractors in high risk roles during the pandemic and has called on investors to engage with companies on the issue, following reports that security guards at Melbourne's quarantine hotels, and separately frontline contract workers at Cedar Meats, received inadequate training and minimal personal protective equipment which in both cases, was traced back to COVID-19 outbreaks.

The ACCR argues that the two cases serve as examples of the ways in which use of complex subcontracting arrangements can increase companies exposure to operational, workforce and business risks, and underlines the need for better reporting and oversight by companies and stronger engagement from investors.

Call for companies to improve disclosure: Separately, the ACCR released a report in May – Labour Hire and Contracting across the ASX 100 – highlighting that poor reporting on subcontracting arrangements (and therefore on the associated risks) among ASX 100 companies, is hampering investor's understanding of significant potential risks. For example: the report found that most companies do not report any data on their contractors and very few report any health/safety data for contractors.

This is an issue, the ACCR argues because it means that potentially significant risks - eg poorer occupational health and safety outcomes; increased risk of modern slavery; and possible wage theft – are not visible to investors (or possibly to the companies themselves).

Page 35 of the report provides suggested guidance for companies to assist them to expand their reporting beyond direct employees and guidance for investors on engagement on these issues.

[Sources: ACCR media release 03/07/2020; Labour Hire and Contracting across the ASX 100]

Meetings and Proxy Advisers

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COVID-19: 'Virtual AGMs, electronic signatures replacing "wet" signatures and letting people execute documents electronically are all no brainers' says Senator Bragg

The Senate Select Committee on Financial Technology and Regulatory Technology held a public hearing on 30 June largely centring submissions from the Governance Institute of Australia and separately, from the Australian Institute of Company Directors (AICD), concerning the need to modernise certain Corporations Act requirements. The transcript of the hearing is here.

[Note: The Governance Institute's submission is here. The AICD's submission is here. For a summary of the Governance Institute's submission see: MinterEllison Governance News 10/06/2020.]

Following the hearing, the Committee Chair Andrew Bragg issued a statement in which he said that he considers there to be 'overwhelming evidence that relaxation of outmoded corporate communication to deal with the COVID-19 crisis needs to be extended' given that the changes have served to improve visibility, accessibility and to reduce costs.

'Virtual AGMs, electronic signatures replacing “wet” signatures and letting people execute documents electronically are all no brainers' Mr Bragg said.

Senator Bragg went on to say that the pandemic has served to accelerate the pace of change and that putting in place the temporary changes 'is a golden opportunity to fast track changes' on a more permanent basis.

The committee is to present its final report on or before the first sitting day in October 2020.

[Source: Senator Andrew Bragg media release 30/06/2020]

Observations from US virtual meetings: Soundboard Management suggests ways in which companies can improve shareholder participation going forward

Starboard Governance observes that COVIC-19 restrictions have caused a spike in the number of companies holding their meetings electronically. Based on a sample of ten virtual shareholder meetings during the US spring 2020 AGM season, Soundboard has released a summary of its observations and identified some emerging 'best practices' for holding meetings in this format to help ensure shareholders' ability to participate is optimised in future AGM seasons.

Soundboard's observations

- Inconsistency in instructions for attendance: Soundboard found that there was wide variation in the instructions given to shareholders around attending meetings and the time shareholders had to act on them.
- Audio-only: In most cases, shareholders could hear, but not actually see the meeting, possibly Soundboard suggests, due to bandwidth limitations (caused by the surge in demand). Soundboard comments that going forward, shareholders are likely to insist on live webcasts to enable them to 'size up' the board and to as closely as possible 'replicate' the in-person experience. .
- Shareholder participation – mixed success: In addition to not being able to see the meeting, there were other limitations. For example, though voting and putting questions to the board/management was straightforward, Starboard observes that the probability of receiving an answer to a question was much lower as management/board could not usually see who had submitted the question (ie they could only see the text of the question).
- Access to technical support (for shareholders) was inconsistent: Where shareholders could find information about accessing technical support varied from company to company as did the extent of support provided. In some cases, help-line numbers were only included in the notice of meeting, not on company websites. This meant that shareholders needed to have the notice of meeting handy in order to Soundboard found that the way in which technical support was provided,

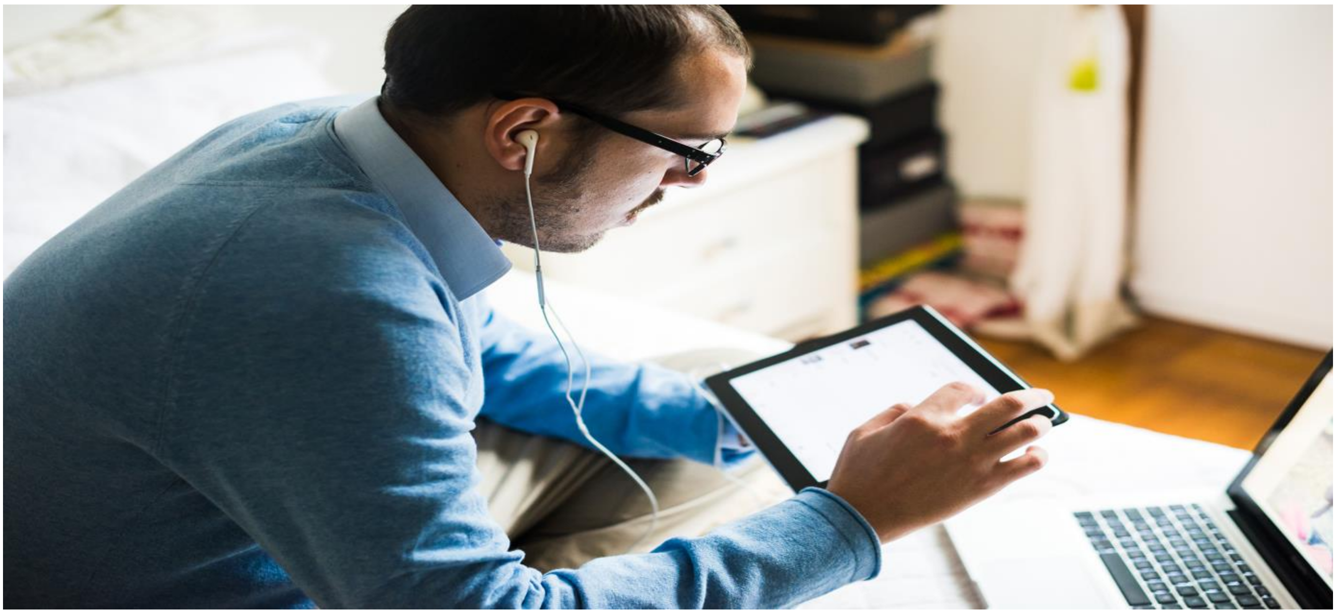
Emerging best practice

Based on these and other observations Soundboard makes a number of observations about emerging 'best practice' that companies may wish to consider going forward, in order to optimise shareholder participation at future meetings.

Tips for companies include (among others):

- Providing clear 'plain English' instructions about how shareholders can attend, vote and ask questions in proxy materials
- Making sure meeting-related information is centrally accessible (eg on the meeting page of the company website)
  - Publishing all information shareholders may need in order to access the meeting in one place ahead of time.
  - Listing the help line number/having an online chat feature on the meeting page to make accessing technical assistance as simple as possible.
  - Posting the annual report, proxy statement, rules of order and agenda on the main meeting page.
  - Publishing a preliminary voting report at the end of meeting and posting the final inspector of election report on the company website.
- Shareholder participation
  - Taking into account, when scheduling the meeting, the fact that shareholders from different US time zones may wish to attend.
  - Providing a live-webcast of the meeting, to enable shareholders to see board/management participants in the meeting with closed captions for the hearing impaired.
  - Enabling shareholder proponents to either call into the meeting to present their proposal live or to send a pre-recorded message to be played at the meeting. Soundboard suggests that shareholder proponents should eb allowed a minimum of three minutes to present their proposal.
- Shareholder questions:
  - Allowing shareholders to submit questions ahead of the meeting as well as allowing shareholders to submit questions live/or to put their questions live via a dedicated phone line.
  - Reminding shareholders to include their name/contact details with their question if they want a response.
  - Ensuring that management/board answer 'all appropriate questions that are submitted'.
  - Publishing questions and answers on the company's website after the meeting.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 02/07/2020]



Markets and Exchanges__

The ASX proposes to delay the CHESS replacement 'go live' date by 12 months – consultation paper released

The ASX is consulting on a revised CHESS replacement implementation timetable which proposes to push out the original timeframes and ultimately to delay the 'go-live' date to April 2022 (12 months after the original date).

The ASX gives three reasons for the proposed delay:

1. to provide 'additional time for the ongoing impact of the COVID-19 pandemic on all stakeholders';
2. to accommodate functionality changes requested by users, and
3. all a longer period for both the ASX and CHESS users to 'complete their respective development and readiness activities'.

Announcing the consultation, ASX Deputy CEO Peter Hiom said that the disruption caused by COVID-19 has underlined the need to prioritise upgrading the outdated CHESS system.

'The recent period of record trading activity and volatility, and the prevalence of manual and paper-based processes in many back offices across the industry, have underlined why the implementation of the next generation of technology to support the digitisation of Australia's equity market is a priority.'

The due date for submissions is 28 July 2020.

[Sources: ASX media release 30/06/2020; Consultation paper: CHESS Replacement Revised Implementation Timetable]

In Brief | Call for reduced trading hours: The Investment Association and the Association for Financial Markets in Europe have made the case to Euronext for trading hours to be reduced seven hours (a reduction of 90 minutes) arguing that shorter hours would deliver benefits to all stakeholders

[Source: IA media release 30/06/2020]

Financial Services

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COVID-19: Avoiding the September 'cliff'? The ABA has announced the next 'phase' of support for customers financially impacted by the pandemic

Key Takeouts

- The Australian Banking Association (ABA) has announced the next phase of support for the 800,000 customers who have deferred their loans for six months because of COVID-19. Eligible customers who are unable to resume repayments at the end of their deferral period will be able to negotiate a further extension of up to four months.
- The measures have been announced following discussion with APRA, ASIC and the ACCC. APRA has announced it has adjusted its regulatory approach to loan deferrals.
- In a joint announcement, consumers groups CHOICE, the Financial Rights Legal Centre, the Consumer Action Law Centre and Financial Counselling Australia welcomed the announcement writing that 'Knowing that there will be further assistance from banks will be a weight off people's minds'.

The Australian Banking Association (ABA) has announced the next phase of support for the 800,000 customers who have deferred their loans for six months because of COVID-19. Eligible customers will be able to negotiate a further extension of up to four months on their loan deferral period.

Announcing the measures, ABA CEO Anna Bligh said that 'This next phase of bank support will avoid a "cliff" for customers in September and give them the breathing space they need to work with their bank and get back on their feet financially'.

Details

- Customers who are able to resume repayments at the end of the current six month deferral period will be required to do so.
- Customers on reduced incomes/suffering financial hardship because of COVID-19 will be contacted by their bank they near the end of their loan deferral period to ensure that where possible, arrangements are put in place to enable them to resume repayments eg through a variation or restructure of the loan. Banks have deployed 5000 additional frontline staff to assist in this.
- Where customers are unable to resume repayments at the end of six months because of COVID-19, and no other arrangements have been made, they will be eligible for an extension of their deferral for up to four months. The additional deferral will also have no impact on a customer's credit report or their credit rating. The ABA emphasises that the additional deferral will not be 'automatic' and will negotiated on a case by case basis where customers are 'genuinely in need of extra time'. The ABA observes that many customers may need less than four months to either restructure their loan to resume full repayments.
- If during/at the end of the deferral period customers are unable to make repayments, they will be assisted through banks' hardship processes.

Response: Consumer groups have welcomed the announcement

In a joint announcement, consumers groups CHOICE, the Financial Rights Legal Centre, the Consumer Action Law Centre and Financial Counselling Australia welcomed the announcement writing that 'Knowing that there will be further assistance from banks will be a weight off people's minds'.

The groups also called on banks to 'recognise' that: a) some customers will need longer term/more flexible hardship arrangements; and b) that customers in financial difficulty will not only have difficulty making loan repayments but also paying for essentials.

The groups have also called on banks to provide specific assistance to those trapped in 'long term persistent credit card debt' eg interest rate reductions, debt waivers and refunds of interest.

Finally the groups calls on other financial services providers, utilities and telecommunications companies to follow the banks' lead by providing proactive support to customers financially impacted by the pandemic.

Banks

CBA and Westpac have issued separate statements outlining how they will implement the support measures and the work they have already done in this area.

Commenting on the support measures, CBA Chief Executive Officer Matt Comyn commented that CBA is 'committed to continuing our industry leading support for customers and businesses to help them get back on their feet and inject vital financial stimulus into the Australian economy.'

Consistent with the ABA's statement, Westpac Acting CFO Gary Thursby said that the bank will extend support to those customers who need it, but noted that many customers will be in a position to resume repayments at the end of their original deferral period and encouraged 'as many people as possible to do so'. resume

Regulators

- The ABA said that the measures have been developed following discussions with both the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) 'to provide the appropriate regulatory treatment'. APRA's updated regulatory approach to loans subject to repayment deferral are covered in a separate post below.
- The Australian Competition and Consumer Commission (ACCC) has granted interim authorisation for the measures, and implementation is subject to notification to the Australian Competition and Consumer Commission (ACCC). Details of the agreement with the ACCC are below.

[Source: ABA media release 08/07/2020; Consumer groups joint media release 08/07/2020; CBA media release 08/07/2020; Westpac media release 08/07/2020]

ACCC interim authorisation – details

The ACCC has released a draft determination proposing to grant conditional authorisation for ABA member banks to work together to provide financial relief to customers

Context: On 30 March, the Australian Competition and Consumer Commission granted interim authorisation, at the request of the Australian Banking Association (ABA), for ABA member banks to 'discuss, agree and give effect to arrangements between them' where the purpose of the arrangements is to: a) defer/vary loan facilities; b) support government emergency relief measures for individuals/businesses; c) 'ensure continued high levels of customer service and accessibility'. The interim authorisation will remain in place pending the ACCC's decision on whether it will agree to the ABA's request to grant authorisation for a period of 12 months. .

Draft determination released: On 1 July 2020, the ACCC released a draft determination proposing to grant conditional authorisation for 12 months from the date on which final authorisation is granted. Under the conditions, the ABA would be required to notify the ACCC of all 'proposed conduct' including conduct involving a supplier or agent.

The due date for submissions on the draft determination is 17 July. The indicative timeline for providing a final determination is July/August 2020.

[Sources: ACCC media release 01/07/2020; Draft determination]

APRA has updated its regulatory approach to loan deferrals

- Context: On 23 March 2020, the Australian Prudential Regulation Authority (APRA) announced that banks that offered borrowers financially impacted by the pandemic, the option to defer repayments for up to six months, were not required to treat the repayment deferral period as a period of arrears for regulatory reporting/capital adequacy purposes.

- **Extension of this approach:** On 8 July, APRA announced that this regulatory approach will be extended to 'cover a maximum period of 10 months from the start of a repayment deferral, or until 31 March 2021, whichever comes first'.
- **Restructured loans:** In addition, APRA has adjusted its 'normal regulatory treatment' of loans that are restructured. APRA says that 'where an ADI restructures an affected borrower's facilities before 31 March 2021 with a view to putting the borrower on a sustainable financial footing, the loan may continue to be regarded as a performing loan for capital and regulatory reporting purposes'.

APRA's expectations of lenders

- **Assessment of the 'particular borrowers' circumstances:** APRA expects lenders to undertake 'appropriate credit assessments' to determine whether an extension/deferral is appropriate 'for the particular borrower' in their circumstances before granting a deferral/extension on an existing deferral.
- **Implementation plan:** APRA expects lenders to have a 'comprehensive plan' outlining how they will 'systematically work through the large volume of impacted customers' while avoiding 'operational constraints as deferral periods come to an end'.
- **Reporting requirement:** APRA will require lenders to provide 'regular disclosures regarding the status of their deferred, restructured and impaired loan portfolios'. APRA plans to publish monthly aggregate data the 'extent and nature' of loans subject to deferrals.
- **APRA to monitor implementation:** APRA says that it 'will actively supervise the implementation of these measures and continue to engage with industry to support impacted customers and facilitate the recovery of the Australian economy'.

Announcing the measures, APRA Chair Wayne Byres commented that they are 'designed to incentivise ADIs to continue to support their customers through an extended period of uncertainly, while at the same time facilitating the restructure of eligible loans in a measured and timely manner. We are fortunate that the Australian banking system has the balance sheet strength to be able to provide ongoing support to customers temporarily impacted by COVID-19. This will help to avoid unnecessary hardship and foreclosures, and allow the banking sector to work with its customers to find the best solution to manage their debts'.

[Source: APRA media release 08/07/2020]

FSRC Referrals: APRA announced regulatory actions relating to two cases referred by the Hayne Commission

On 2 July, the Australian Prudential Regulation Authority provided updates on two of the twelve cases referred to the regulator by the Hayne Commission for investigation.

APRA has imposed an additional licence condition on Colonial First State Investments Ltd (CFSIL), APRA's investigation found no breach of the SIS Act

- APRA states that its investigation into certain CFSIL fee arrangements did not identify that CFSIL breached the Superannuation Industry Supervision Act (SIS Act), but did raise 'concerns about the adequacy of CFSIL's internal processes for demonstrating how members' best interests were considered and prioritised'.
- To address these issues APRA has imposed an additional licence condition requiring CFSIL to 'record how it considers members' best interests and members' priority covenants when making decisions that materially affect their interests'. The condition was not opposed by CFSIL.

APRA has issued directions and imposed a new licence condition on Suncorp Portfolio Services Limited (SPSL)

Context: The Hayne Commission referred two issues to APRA for investigation: 1) APRA was asked to investigate SPSL's (alleged) delay in transferring members into its lower fee MySuper product just before the legal deadline; and 2) APRA was asked to investigate SPSL's payment of tax surpluses to Suncorp Life.

Outcome of APRA's investigation into the first issue: APRA says that its investigation did not conclude that there was any breach of the SIS Act, but that it did raise 'concerns about the adequacy of SPSL's internal processes for demonstrating how members' best interests were considered and prioritised'.

To address these concerns, APRA has:

- Imposed a new licence condition on SPSL requiring that 'document how it considers and prioritises members' interests when it makes decisions that materially affect their interests'.
- Issued directions to SPSL concerning member remediation. SPSL has been directed to: 'obtain independent expert verification of the analysis and methodology that will be used to determine the remediation of members affected by the delay in transferring to MySuper products; notify affected members of the remediation plan; and make a public statement in respect of the plan'.

Review into trustee reserving practices: APRA's investigation into the second issue referred by the Commission will be considered as part of a 'broader thematic review into trustee reserving practices in the superannuation industry'. APRA will then determine what 'further action may be necessary'.

[Sources: APRA media releases 02/07/2020; 02/02/2020]

ASIC has issued a no-action position to enable AFS licensees to count right-of-use lease assets towards meeting their financial resource requirements

The Australian Securities and Investments Commission has issued a temporary no-action position to enable Australian Financial Services (AFS) Licensees to count right-of-use lease assets towards meeting financial resource requirements.

Though ASIC states that the no action position is temporary, no end date has been specified. The no-action position will remain in place 'until further notice'.

Why is the no actin position needed?

- Australian Financial Services (AFS) licensees are required to maintain adequate resources, including financial resources, to provide services under the terms of their licences.
- Changes to the accounting treatment of lease assets – AASB 16 Leases (AASB 16) – mean that right-of-use assets will (generally) no longer count towards meeting financial resource requirements. This, ASIC observes, could make it more difficult for some AFS licensees to meet their financial resource requirements.

Details: (Temporary) no action position

To provide relief, ASIC has issued a temporary no-action position which will:

- allow right-of-use lease assets to be counted towards financial resource requirements; and
- commit ASIC not to take regulatory action against an AFS licensee in relation to a breach of a financial resource requirement, provided that: a) the breach was caused by the AFS licensee's inability to count a right-of-use asset towards meeting its financial resource requirement; and b) this 'inability arises from recent changes to the accounting treatment of lease assets as a result of AASB 16'.

Next steps

ASIC says that will consult in FY20/21 on proposals to change the financial resource requirements to enable AFS licensees to include a right-of-use lease asset when calculating whether it meets its financial resource requirements.

[Sources: ASIC media release 07/07/2020; No action position: No-action position to allow right-of-use lease assets to count in satisfying AFS licensee requirements]

Societe Generale Securities has pleaded guilty to client money offences

The Australian Securities and Investments Commission (ASIC) has announced that Societe Generale Securities Australia Pty Ltd (SGSAPL) has pleaded guilty to the following client money offences (which occurred during 8 December 2014 and 8 February 2017).

- breaching s993B(1) of the Corporations Act 2001 (Cth) (Act) on two occasions by failing to pay money into an account that satisfied the client money requirement in s981B of the Act
- breaching s993C(1) on two occasions by making payments out of a client money account that were not permitted under the Corporations Regulations.

The matter has been listed for sentencing on 21 September 2020.

[Source: ASIC media release 01/07/2020]

COVID-19: ASIC reminds superannuation funds of its expectations of them during the pandemic

Australian Securities and Investments Commission (ASIC) superannuation senior executive leader Jane Eccleston has published an article outliing ASIC's expectations of superannuation funds during the COVID-19 pandemic and the role ASIC expects funds to play.

Some Key Points

- Focusing on member interests: Noting that both ASIC and the Australian Prudential Regulation Authority (APRA) have adjusted their regulatory activities in light of the pandemic to enable trustees to focus on their COVID-19 response, Mr Eccleston emphasised that 'trustees' compliance with their legal obligations cannot take a backseat in the current environment. Staying true to the core of your trustee duties — that is, focusing on your members' interests —remains crucially important. In the absence of specific relief, your trustee obligations are unchanged'.
- The importance of clear, detailed and accurate information to members: Ms Eccleston said that trustees have 'an important role to play in supporting their members by providing balanced, factual and timely information to their members about superannuation issues' in the current context.
- ASIC review of communications: Ms Eccleston writes that ASIC's review of trustee's websites and other member communications about COVID-19 matters found that most communications present 'detailed and accurate information' and where this was not the case, ASIC has contacted trustees to make amendments.
- Focus areas:
  - Communication about the early release of superannuation scheme: Ms Eccleston said that ASIC encourages trustees to ensure that member communications about the early release of superannuation scheme are based on 'reasonable assumptions' and that any modelling of the impact of accessing savings early are 'today's dollars to avoid presenting misleading information'.
  - Disclosure requirements: Where members have a zero balance as a result of withdrawing their savings under the early release scheme, Ms Eccleson said that trustees may need to provide them with an exit statement (and then a new PDS for any subsequent contributions), depending on the governing rules of the fund.
  - Insurance in superannuation: Ms Eccleston said the trustees should clearly communicate with members about how accessing their superannuation early could impact their insurance cover and their options for reinstating cover.
- The role of funds in providing access to financial advice: Ms Eccleston writes that members may be looking for more than factual information or general advice in the current environment eg in the context of considering whether to apply to access their superannuation early. Ms Eccleston reminded funds that ASIC has issued a no-action position to enable funds to provide intra-fund advice in relation to the early access scheme. Ms Eccleston also flagged that ASIC is undertaking surveillance work to check that this advice relief measure (and others) are 'serving the interests of consumers'.
- The role of funds in protecting members from scams: Ms Eccleston encouraged trustees to 'continue to be vigilant about protecting their members' interests and promptly share[ing] intelligence with the regulators'.

Ms Eccleston concluded by calling on funds to avoid complacency and to continue to 'adapt and evolve their approaches'. Ms Eccleston also called on funds to avoid a prescriptive approach to compliance; to learn from member interactions to improve processes and communication; and to ensure that members best interests is the guiding principle when making 'difficult decisions or compromises'.

[Source: Article by Jane Eccleston, ASIC's superannuation senior executive leader 03/07/2020]

COVID-19: So far funds have paid out $18.1bn under the government's early release of superannuation scheme and APRA has said 'high volumes of applications are expected' for the second tranche of applications

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 28 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 28 June, superannuation funds made payments to 129,000 members worth a total of $1.2 billion.
- Since the inception of the scheme, 2.4 million payments worth $18.1 billion have been paid.
- The average payment made over the period since inception is $ $7,503 (up from 7,492 in the last update)

APRA observes that 'high volumes of applications are expected for the start of the second tranche of the COVID-19 Early Release Scheme in early July' which may impact payment processing times.

The figure is now $27 billion? The AFR reports that ATO figures supplied to the Treasurer's office on 7 July suggest that there has been a significant uptick in the number of applications since 1 July that has pushed the total amount of savings withdrawn under the scheme to $27 billion.

[Source: APRA media release 06/07/2020; [registration required] The AFR 08/07/2020]

COVID-19: Aviva investors research shows 37% of people have paused/decreased their retirement savings during the UK lockdown

Research from Aviva Investors has found that the UK lockdown has sparked increased focus on personal finances, and more particularly on pension savings.

According to Aviva:

- one in ten (11%) of people have decreased or stopped their pension contributions
- 8% of people overall and a higher proportion of younger people (17% of 25-34 year olds) have checked where their pension is invested
- 5% of people overall (and 10% of 24-34 year olds) have increased their contributions to their pension savings.
- 16% of people agreed that the lockdown has caused them to think about their pension more than they have previously.
- More broadly, 29% of adults have said that their reviewing their spending more often than previously.

[Source: Aviva Investments media release 01/07/2020]

Financial Advice: 'Smarter regulation' to reduce costs to the sector is what's needed, Committee hears

Key Takeouts

- The Committee heard that the FPA and AFA agree that professional standards in the sector need to be raised, but have concerns about the way in which reforms are being implemented, including concerns about unintended negative consequences for consumers and advisers.
- The Committee heard that the impact of regulatory reform has increased the costs of providing financial advice which in turn has led to the exit of many advisers from the sector. This has resulted in fewer consumers having access to financial advice.

- In making these points, the associations underlined their acceptance of the need for reform 'We know there's need for regulation, but it's about smarter regulation and removing the duplication, which will help reduce the cost. That's all we're asking for' AFA board members Sam Perera said.

Representatives from the financial advice sector appeared before the House of Economics Standing Committee on Economics Inquiry into Australia's four major banks and other financial institutions on 30 June.

Broadly, questions to representatives from the Financial Planning Association (FPA) of Australia and the Association of Financial Planners (AFA) largely centred around: a) how the culture within the sector has changes/steps implemented to change it in response to issues identified by the Hayne Commission; b) the decline in the use of financial advice/reasons for the decline; and c) concerns (from both associations) about the implementation of Financial Services Royal Commission Recommendations/additional regulation of the sector and the impact on advisers, on the sector and on the community.

A high level summary of some of the key points from the hearing is below. The full transcript of the hearing is here.

Cultural change within the financial advice sector post-Hayne

Asked to explain how the culture in the financial planning/advice sector has changed in response to the issues raised by the Hayne Royal Commission, CEO of the Financial Planning Association of Australia Dante De Gori and CEO of the Association of Financial Planners Philip Kewin said that the shift away from a perceived sales culture in the sector and moves towards lifting professional standards was already underway pre-Commission and that the Commission served to accelerate this process.

The decline in the use of financial advice and the reasons for the decline

The Committee heard from both associations, that there is increased demand for financial advice, but that the affordability of advice, and access to advice, is declining for many people in the community.

This is attributed by the associations to: 1) the impact of regulatory changes/the way in which change is being implemented (and the associated increased costs of providing advice); 2) structural changes in the sector; 3) the fact that a number of advisers have elected to exit the profession; and 4) the fact that many advisers are electing to focus on providing services to 'higher-net-worth individuals'. Mr De Gori said,

> 'the reality is that we need regulatory reform to try to help unwind some of the, in our opinion, duplication and unnecessary regulation that is bogging down the provision of advice to more Australians. The demand is there, but we are seeing, on two sides, reform and regulation which are increasing the costs and therefore driving financial planning businesses to target higher-net-wealth clients. Secondly, as was also said in our statement, there are a number of financial planners leaving the profession. We have a demand/supply issue here, where we are reducing the supply of financial planners in the profession at the same time as the demand and the need for advice are increasing and getting greater'.

General Manager, Policy and Professionalism, Association of Financial Advisers Philip Anderson said that the increased costs of providing advice are being 'driven by a range of regulatory reforms, including the increased professional standards but also increasing demands with respect to the process that advisers need to follow in the delivery of financial advice'. Mr Anderson said that the association's concern is that 'the costs are substantially increasing for advice practices, while revenue is certainly on the way down, so it's about how a cost-effective service that is still economically viable for financial advisers can continue to be provided to everyday Australians. That's the big challenge that we are keen to see addressed'.

In making these points, the associations underlined their acceptance of the need for reform 'We know there's need for regulation, but it's about smarter regulation and removing the duplication, which will help reduce the cost. That's all we're asking for' AFA board members Sam Perera said.

Raising professional standards – the implementation of reforms

Both associations raised concerns about the implementation of reforms by FASEA: Both associations emphasised their support for the need the need to raise professional standards, but raised concerns about the way in which changes are being implemented, and more particularly, about FASEA's approach. 'Raising the education qualification for financial planners was overdue. It's something that we completely support. Our criticism on the public record is about the implementation. It's really around the process by which the standards are being implemented' Mr De Gori said. Mr Kewin said, 'As Dante already alluded to in terms of FASEA, we're not pushing back against a code of ethics or against education standards. We're just trying to get the right balance on the implementation to ensure that we have the profession that everyone is craving but, at the same time, we have an appropriate transition and a practical code of ethics that can actually be workable at the practical level'. Some of the criticisms levelled at FASEA include: lack of appropriate recognition of prior learning (especially for experienced/older advisers); lack of sufficient guidance from FASEA on new the code of ethics; and FASEA's handling of the roll out of the new exam (though it was acknowledged that an extension of time had been granted to enable members to complete it).

Increased costs of providing advice: A number of questions to the associations concerned how new regulation has contributed to increased costs of providing advice. Both associations said that compliance costs have increased considerably in part because of the duplication of requirements from different oversight bodies. 'We have three key regulators. We have ASIC, who administer the Corporations Act; we have FASEA, who have professional standards and the code of ethics; and then we have the TPB [tax practitioners board], with their own code of professional conduct. Some of those requirements are duplicative or they're inconsistent, so there is a great opportunity to try and rationalise the requirements to providing financial advice and look at it from the perspective of delivering the best outcome for clients in terms of an efficient process that's cost effective and leads to quality financial advice' Mr Anderson said.

Negative impact on the mental health of advisers: Asked to comment on whether the reforms have negatively impacted the mental health of advisers, Mr Kewin said that 'The sheer weight and number of reform—we've seen so much reform. As we've said throughout this call, everyone is committed to professionalism, but the journey to professionalism has been so rapid and the change has been so monumental that it has put an extreme amount of pressure on financial advisers'.

Associations positions on implementation of the Hayne reforms: A number of questions to the associations concerned their historical position towards reform of the sector. Committee Deputy Chair Andrew Leigh said that historically both associations have lobbied to 'either oppose or delay' reforms. The associations underlined their support for the need to raise professional standards, including disciplinary standards, and their support for the Hayne Commission's recommendations but again questioned the way in which recommendations are being rolled out.

Ending of grandfathering of commissions: Asked to comment the AFA's position on ending grandfathered commissions, and more particularly the AFA's criticism of AMP and CBA in moving early to do so, Mr Kewin said 'there was nothing in the royal commission that highlighted the disadvantage to clients as result of grandfathered commissions' and that the AFA wanted the continuation of payments 'at least for a period of time' to enable a smooth transition to alternate arrangements for advisers and for clients. Mr Kewin said, 'We were very concerned about the unintended consequences and the ability of the manufacturers to pass back the benefits to the clients, because there's no benefit in doing this if those benefits aren't passed back to the clients. We were also concerned about potentially having to move out of products that structurally wouldn't enable the pass-back and therefore could trigger CGT implications. So, there are a number of complexities as to why we argued moving early was disadvantageous to both advisers and the many clients they served' . Asked to clarify whether he accepts that ending grandfathered commissions is in the interests of clients, Mr Kewin said 'advisers should be paid for the work that they do. Grandfathered commissions were a way of ensuring advisers could provide a service to clients—many of those clients, many of those low-value clients, who could be talking to an adviser right now. They're concerned about the financial markets, but they probably wouldn't have access to those advisers now because they don't have ongoing fee arrangements'. Mr De Gori said that the FPA supports the Hayne recommendation concerning the ending of grandfathered commissions in full.

The FPA's suggested reform of the existing AFSL licensing model: Asked to comment on the Financial Planning Association's suggested proposal to replace the current occupational licensing requirement with an individual registration model, Mr Anderson said that the proposal deserves consideration, but stopped short of endorsing it. Mr Anderson said 'it deserves individual consideration. It's an extremely complex area. The Australian Financial Services licences regime at the moment provides a structure that incorporates a scale of training, provision of technology and uniformity that enables advisers en masse to gain the benefit of that scale. To remove that would remove a significant level of support, and that support would then have to be supplemented somewhere else. So I think it's worthy of discussion, but it is an extremely complex situation and we would need to look at the implications and how that would work in practicality'.

Mr De Gori said that 'we think our individual registration recommendation will do away with that variance of standards by having one single body that will actually register someone, like in other professions where, as you mentioned, they register someone and give them their certificate of practice to actually provide advice'.

Other issues

The provision of intrafund advice: Asked for their views on the provision of intrafund advice within the industry superannuation sector the associations said that it's a method of providing access to advice to a broad range of members at 'reasonable cost.' Mr Anderson said that 'The cost of providing the service is less. There are other differences in that intrafund advice is restricted to certain services related to the member's current holding in the fund. By implication, that's going to be cheaper, quicker advice. From a consumer perspective, we obviously want to see as many Australians as possible getting access to advice. We need to see all forms of advice available at a reasonable cost so that it's both accessible and affordable for everyday Australians.' Along similar lines, Mr De Gori said, 'I make the comment that many of our members who are qualified financial planners also operate as intrafund advisers with industry funds. The requirement for industry funds to meet the FASEA standards is exactly the same. The requirement to provide advice is the same. As the AFA mentioned, it's a much narrower focus. The big distinction, of course, is how it's paid for. The collective membership of a super fund pays for intrafund advice, whereas, for those who do not operate in intrafund environments, only the client that receives the advice pays for the advice. That's a very big difference. That has a big impact in terms of remuneration models and revenue models that operate in those businesses'.

[Source: Transcript: House of Representatives Standing Committee on Economics Inquiry: Australia's four major banks and other financial institutions: financial advice sector 30/06/2020]

Free service for consumers: AFCA has banned a paid third party representative from lodging complaints on behalf of customers for 15 months

The Australian Financial Complaints Authority (AFCA) has announced it will not accept any further complaints lodged on behalf of consumers by MCR partners for a period of 15 months (25 June to 30 September). AFCA will then review its decision and determine whether it will accept complaints from MCR subject to conditions.

Announcing the decision, AFCA CEO and Chief Ombudsman David Locke said that it was important for consumers to understand that AFCA provides a free service and that there is no need to pay a third party provider to lodge a complaint.

AFCA said that in order to minimise the impact of the decision, it will continue to work on complaints that have already been lodged.

This is the first time that AFCA has exercised its discretion to exclude a third party paid representative.

[Source: AFCA media release 01/07/2020]

AFCA reports a 13.7% uptick in the number of complaints received during the period 1 July 2019 to 30 June 2020

The Australian Financial Complaints Authority (AFCA) has released complaints data for the period 1 July 2019 to 30 June 2020.

- AFCA received 80,546 complaints during the period which represents a 13.7% uptick as compared to the last financial year (FY 18/19).
- 78% of complaints were resolved within 60 days or less, with 73% of these settled by agreement or in favour of the complainant.
- Banks were the most complained about financial institution (46% of complaints) followed by general insurers (26% of complaints) and credit providers (16% of complaints). Debt collectors/buyers were the least complained about (4% of complaints). Since 1 November 2018, banks, general insures and credit providers have consistently ranked as the top three most complained about institutions in that order.

- The top three most complained about products were: credit products (43% of complaints); general insurance products (24%); and superannuation products (9% of complaints). Credit products have consistently been the most complained about product since AFCA started receiving complaints on 1 November 2018.
- AFCA received 4,773 complaints relating to COVID-19, 20% of which related to financial hardship. AFCA also received 1,500+ complaints relating to travel insurance. AFCA CEO and Chief Ombudsman David Locke commented that the number of COVID-19 related complaints was lower than anticipated due to the proactive steps taken by financial institutions and commended isntitutions for their swift action.

[Sources: AFCA media release 02/07/2020]

In Brief | ASIC has announced that from 27 July, the ASIC Regulatory Portal will be the central point for accessing various ASIC services and will replace other submission channels for submitting applications for relief and fundraising and corporate finance documents

[Source: ASIC media release 06/07/2020]

In Brief | CBA has partnered with Our Watch to launch a new portal providing free resources for employers to assist them in supporting staff who are experiencing domestic and/or family violence

[Source: CBA Media release 07/07/2020]

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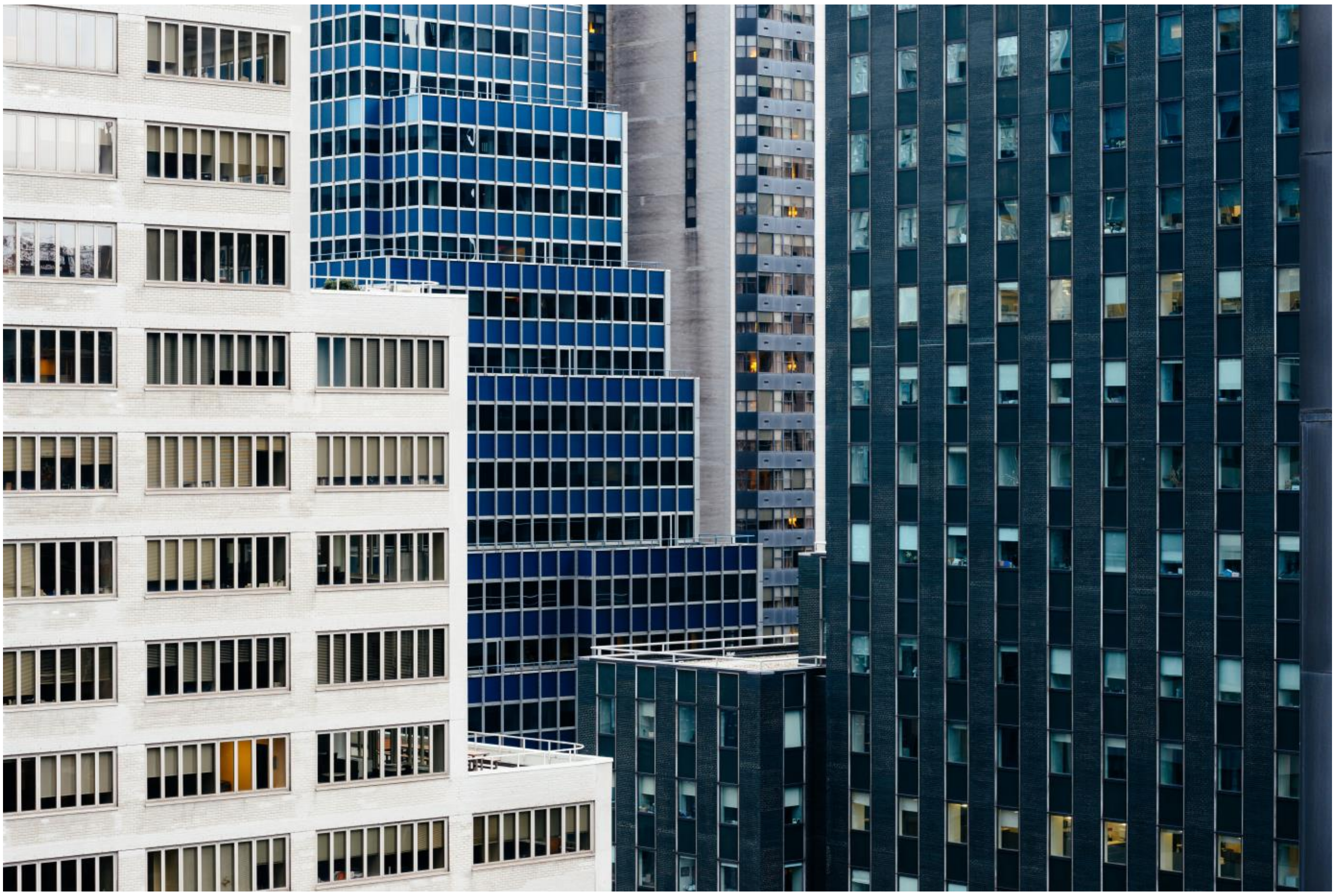

Accounting and Audit

Top Story | UK regulator sets parameters and timeline for the big four firms to (operationally) separate their audit practices

Key Takeouts

- Principles for the operational separation of audit practice released: The FRC has released a set of 22 principles to guide the big four audit firms in separating their audit practices
- Objectives and desired outcomes of operation separation:
  - The principles are underpinned by two objectives: 1) ensuring that the primary focus of audit practices is on delivery of high quality audits in the public interest; and 2) severing audit reliance on revenue from other parts of the firm to subsidise audit practice.
  - The principles also identify a number of desired outcomes which broadly set the expectation that the culture, governance, remuneration and accountability frameworks and processes within audit practices operate to enable auditors' (including audit partners') primary focus to be on delivery of quality audits in the public interest.
  - Going forward, the FRC intends to publish an annual assessment of the extent to which firms are delivering against these objectives/outcomes.
  - In addition, the FRC says that it intends to 'seek backstop powers to require firms to deliver these outcomes as part of the forthcoming audit reform legislation'
- Timing:
  - Firms are required to submit an implementation plan to the FRC by 23 October 2020
  - The deadline for separating their audit practices, in alignment with the principles, is 30 June 2024 'at the latest'

The UK Financial Reporting Council (FRC) has released a set of 22 principles to guide the big four audit firms in separating their audit practices.

Announcing the release of the principles, FRC CEO, Sir Jon Thompson said:

> 'Operational separation of audit practices is one element of the FRC's strategy to improve the quality and effectiveness of corporate reporting and audit in the United Kingdom following the Kingman, CMA and Brydon reviews. Today the FRC has delivered a major step in the reform of the audit sector by setting principles for operational separation of audit practices from the rest of the firm. The FRC remains fully committed to the broad suite of reform measures on corporate reporting and audit reform and will introduce further aspects of the reform package over time'.

Objectives and desired outcomes of operational separation

The Principles document identifies both the objectives and desired outcomes of operational separation, and these underpin the 22 principles. Going forward, firms will be expected to demonstrate to the regulator how they are delivering against them.

Two Objectives

- 'Objective 1: Improve audit quality by ensuring that people in the audit practice are focused above all on delivery of high-quality audits in the public interest'.
- 'Objective 2: Improve audit market resilience by ensuring that no material, structural cross subsidy persists between the audit practice and the rest of the firm'.

Desired Outcomes

Broadly speaking, the 'desired outcomes' set the expectation that the culture, governance, remuneration and accountability frameworks and processes within audit practices operate to enable auditors' (including audit partners') primary focus to be on delivery of quality audits in the public interest.

Culture/Governance:

- 'Audit practice governance prioritises audit quality' and 'protects auditors from influences from the rest of the firm that could divert their focus away from audit quality'.
- 'The culture of the audit practice supports audit quality and the public interest by encouraging ethical behaviour, openness, teamwork, challenge and professional scepticism/judgement'.
- 'Auditors should act in the public interest and work for the benefit of shareholders of audited entities and wider society; they are not accountable to audited entities' executive management and are not (nor viewed as or considered to be) consultants'.

Remuneration

- Profits distributed to audit partners 'should not persistently exceed' profits generated by the audit practice
- The primary consideration in setting individual audit partner remuneration is contribution to audit quality, 'taking account of the degree of difficulty and risk of the audits'.

Monitoring of performance

- 'Audit practice financial reporting is transparent to the regulator and public, allowing effective monitoring of audit practice performance and financial resilience'.

Principles

1. Governance: Principles 1-10 relate to the role, responsibilities and composition of the audit board and cover issues including (among other matters): a) the audit board's purpose; b) composition, c) minimum skills requirements (at least one member of the audit board should be a former auditor or 'consumer of audit services'); and d) oversight responsibilities (eg oversight of audit partner promotion and remuneration and oversight of audit CEO and audit strategy). Principle 10 requires states the Audit Board 'have the authority to commission reviews from Internal Audit to support their oversight role'.
2. Scope of the audit practice: Principles 11-14 concern the scope of the audit practice including: a) specifying the services that fall within the 'ring fence'; b) the circumstances in which speciliasts outside the audit team can provide support; and c) 'other ringfence matters' such as the requirement that audit partners/staff should spend 'the majority of their time on work in the audit practice' and the expectation that revenues from statutory audit work will make up the majority audit practices' revenue.
3. The financial relationship between the audit practice and the rest of the firm. Principles 15-17 outline expectations around the financial separation between the audit practice and the rest of the firm. Principle 17 sets out the FRC's expectation that audit practices should not be cross subsidised by other areas of the firm. The FRC states that this will be one measure of the extent to which firms are delivering against the objectives and outcomes.
4. Partner remuneration: Principle 18 states that remuneration policies/practices for audit partners should reward delivery of high quality audits and positive leadership and include mechanisms to reduce rewards in 'cases of poor audit quality'.
5. Transparency:
   - Principle 19 requires firms to publish 'information about the governance of the audit practice and the terms on which transactions occur between the audit and non-audit business a the nature of these transactions'.
   - Principle 20 requires firms to produce a separate profit and loss account for the audit practice, assured by the firm's auditors, for submission to the FRC annually. The FRC expects firms to submit this information 'no later than four months after the financial year end' during the implementation period. After this period has ended, firms will be expected to publish the audit practices' profit and loss account in their Transparency Reports.
6. Accountability: Principle 21 requires firms to appoint either a single member of the senior management team (or a small group) to be responsible and individually accountable for 'ensuring the outcomes and principles for operational separation are delivered, embedded and monitored'.
7. Transitional arrangements: Principle 22 sets out: a) the timeline for firms to provide the FRC with their implementation plan (23 October 2020) and the deadline for full implementation of the principles (30 June 2024); and b) outlines expectations around reporting/publishing profit and loss accounts. The FRC says that the profit and loss account for the audit practice 'may be done on a best efforts basis'. Firms will also not be

required to publish the profit and loss account while they are executing their agreed transition plans (ie there is no requirement to publish the profit and loss account until after 30 June 2024).

Implementation timeline

The regulator expects firms to submit an implementation plan, in line with the principles, by 23 October 2020. Once firms and the FRC have reached agreement on the plan, firms have until 30 June 2024 'at the latest' to fully implement them.

Next steps

- Regular reporting to the regulator: Going forward, firms are expected to demonstrate to the FRC how they are delivering against objectives and outcomes of operational separation identified in the Principles document, with the FRC publishing annual assessments.
- Additional powers: In addition, the FRC says that it intends to 'seek backstop powers to require firms to deliver these outcomes as part of the forthcoming audit reform legislation'.

[Sources: FRC media release 06/07/2020; Operational Separation Principles July 2020]

Risk Management

CLIMATE RISK

Top Story | PRA expects banks and insurers to have 'fully embedded their approaches to managing climate-related financial risks by the end of 2021'

Key Takeouts

- On 1 July, Deputy Governor of Prudential Regulation and CEO of the Prudential Regulation Authority Sam Woods wrote to regulated banks and insurers to: a) provide feedback on climate risk management implementation plans (SS3/19 implementation plans); b) clarify the regulator's expectations around how firms should manage and disclose the financial risks associated with climate change; and c) set a deadline for full implementation.
- Mr Woods writes that overall firms are 'making good progress' towards developing their approaches to identifying, managing and disclosing climate-related financial risks and that most have started to 'embed' these considerations into their governance and control structures. However, the letter also identifies a number of 'gaps' and includes a number of 'best practice' examples of the way in which specific aspects of climate risk are being managed/approached.
- Mr Woods said that the regulator's expectation is that all firms should have fully embedded their approaches to managing climate-related financial risks by the end of 2021'.
- On the issue of disclosure of climate risk, the PRA writes, 'We expect firms to continue to build their capability to disclose how they govern and manage climate-related financial risks and any material exposures. The Government's Green Finance Strategy stated an expectation that all listed companies and large asset owners will be disclosing in line with TCFD recommendations by 2022. The Bank's response to the Future of Finance report subsequently supported this position. We also note the FCA's current policy consultation for Premium Listed firms to produce TCFD disclosures on a comply-or-explain basis, which will capture a significant proportion of larger PRA-regulated banks and insurers'.

Context

In 2019, the Prudential Regulation Authority (PRA) issued a supervisory statement - SS 3/19 Enhancing banks' and insurers' approaches to managing the financial risks from climate change - setting out the PRA's expectations of how regulated banks and insurers should manage the financial risks associating with climate change. Chapter three of the statement sets out the PRA's specific expectations.

SS 3/19 also set an October 2019 deadline for firms to have in place an implementation plan, but set no date for full implementation.

Following up: Letter to regulated insurers and banks

The PRA has now conducted a review of a number of implementation plans, and has written to firms to provide feedback, to further clarify the PRA's expectations, and to set a 2021 deadline for full implementation.

This means, Mr Woods writes, that 'by the end of 2021, your firm should be able to demonstrate that the expectations set out in SS3/19 have been implemented and embedded throughout your organisation as fully as possible'.

Outcomes of the PRA's review of implementation plans

Mr Woods writes that overall firms are 'making good progress' towards developing their approaches to identifying, managing and disclosing climate-related financial risks and that most have started to 'embed' these considerations into their governance and control structures.

However, the letter also identifies a number of 'gaps' or improvement areas. These include gaps in: a) governance and board oversight of climate risk; b) risk management (metrics and risk management and monitoring processes); c) scenario analysis (firms have yet to integrate scenario analysis into their broader risk assessments); and d) disclosure (some firms are yet to make 'any associated disclosures' as a result of their limited capabilities'.)

Commenting on the lack of integration of scenario analysis, the letter states that 'the development of a proportionate and integrated approach to scenario analysis by the end of 2021 will require many firms to increase their capabilities materially in the near-term'.

Best practice examples

An annexure to the letter (p5) provides more detailed feedback on the outcomes of the PRA's review and highlights some best practice examples of the way in which specific aspects of climate risk are being embedded by certain firms.

For example on the issue of disclosure, the PRA notes that SS 3/19 encouraged firms to consider reporting in alignment with the Taskforce on Climate-related Financial Disclosures (TCFD) framework. The letter comments that 'more advanced firms are publishing TCFD format disclosures in, or linked to, their annual reports' with some 'now approaching fully comprehensive outputs'.

From a timing perspective, the PRA says that its expectation is that,

'...firms to continue to build their capability to disclose how they govern and manage climate-related financial risks and any material exposures. The Government's Green Finance Strategy stated an expectation that all listed companies and large asset owners will be disclosing in line with TCFD recommendations by 2022. The Bank's response to the Future of Finance report subsequently supported this position. We also note the FCA's current policy consultation for Premium Listed firms to produce TCFD disclosures on a comply-or-explain basis, which will capture a significant proportion of larger PRA-regulated banks and insurers'.

> [Source: Letter from Sam Woods 'Managing climate-related financial risk – thematic feedback from the PRA's review of firms' SS3/19 plans and clarifications of expectations' -1/07/2020]

Investment in recycling capability: $190 recycling modernisation fund announced

The government has committed $190 million to a new Recycling Modernisation Fund (RMF). The new fund is intended to enable 10 million tonnes of waste that would otherwise go to landfill to be recycled in Australia through investment in new recycling infrastructure including infrastructure to sort, process and remanufacture mixed plastic waste, paper, glass and tyres.

The government's investment is expected to generate $600 million in recycling investment, and to generate over 10,000 jobs.

The investment is part of a broader national strategy to build recycling capacity and enable Australia to reach its national resource recovery target of 80% by 2030, consistent with the National Waste Policy Action Plan. The new funding has been announced ahead of the introduction of new Commonwealth legislation which will formally enact the government's waste export ban.

Announcing the commitment, Minister for the Environment Sussan Ley underlined the government's expectation of the role industry will play in the process. Ms Ley said 'As we pursue National Waste Policy Action Plan targets, we need manufacturers and industry to take a genuine stewardship role that helps create a sustainable circular economy. This is a once in a generation opportunity to remodel waste management, reduce pressure on our environment and create economic opportunity.'

Response:

- Local government NSW has reportedly expressed support for the measure, but CEO Gayle Sloane is quoted as saying that she is keen to see more detail and would like a commitment from the government to support 'greater demand for recycled materials through government procurement targets'.
- Writing in The Conversation Deakin University's Trevor Thornton welcomed the plan, but said that as well as investing in recycling, waste avoidance, addressing the issue of contamination and creating markets for recycled products all need to be part of the solution to Australia's waste problem given the scale of the issue.

[Sources: Joint media release Minister for the Environment Sussan Ley and Assistant Minister for Waste Reduction and Environmental Management Trevor Evans 06/07/2020; The Conversation 06/07/2020; Government News 06/07/2020]

In Brief | Already signs that the market has shifted? The SMH quotes AustralianSuper Chief Investment Officer Mark Delaney as saying that the market is already punishing 'climate laggards'

[Source: The SMH 06/07/2020]

In Brief | The Greens have adjusted their climate targets to reflect new climate modelling that suggests that existing targets are not sufficient to limit warming to below 1.5 degrees. The Greens' new policy is net zero emissions by 2035 with a 75% reduction on 2005 levels achieved by 2030

[Sources: [registration required] Greens media release 04/07/2020; Greens briefing paper]

In Brief | Reportedly Japan is considering retiring 100 ageing and inefficient coal fired power plants as part of the push to phase out coal power by 2030

[Source: Institute for energy economics and financial analysis 03/07/2020]

ASIC whistleblower guidance for company officers and company auditors released

The Australian Securities and Investments Commission has released two new information sheets for company officers and company auditors on the whistleblower protection regime:

- Information Sheet 246 Company auditor obligations under the whistleblower protection provisions
- Information Sheet 247 Company officer obligations under whistleblower protection provisions

The information sheets provide guidance on: handling whistleblower disclosures; obtaining consent from whistleblowers to disclose their identify if required for investigations and addressing 'any employment issues' involving a whistleblowing while also handling their disclosure.

[Sources: ASIC media release 30/06/2020]

In Brief | Reportedly the CDPP has reduced the charges against ATO whistleblower Richard Boyle from 66 to 24 after a parliamentary report concluded the ATO's investigation into his public interest disclosure was 'superficial'. Reportedly Senator Rex Patrick has called for the remaining charges to also be dropped

[Sources: The ABC 03/07/2020; The Mandarin 03/07/2020]

Contacts

Mark Standen
Partner

—

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

Siobhan Doherty
Partner

—

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

Kate Hilder
Consultant

—

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