

A woman with curly hair, wearing a light-colored collared shirt, is looking down at a tablet computer she is holding. The background is a dimly lit office with blurred lights and equipment. A small red square is in the top left corner.

Governance News

COVID-19 Special Edition

17 June 2020

Contents

COVID-19 Key Developments __	4
COVID-19: Prime Minister says infrastructure investments and deregulation will be key planks in the government's five year recovery plan	4
COVID-19: The Department of the Prime Minister and Cabinet has identified modernising business communications as an immediate priority, the Governance Institute has welcomed plans to 'explore' making legislation technology neutral	6
COVID-19: AICD report finds most directors support a rethink of the pre-pandemic economic agenda	7
COVID-19: Unlikely many of us will opt for a tree change post-pandemic? NAB report casts doubt on predictions that the pandemic will lead to immediate, wholesale behavioural change	10
COVID-19: Temporary changes to the 'access period' will be wound back in line with the easing of other COVID-19 restrictions	10
COVID-19 Recovery Planning: Membership of IR working groups and timing of the first round of meetings announced	11
COVID-19: European Commission has launched a review of trade policy in light of the changed operating environment, including the role trade policy should play in supporting the 'green transition'	12
COVID-19: The AFR reports that National Skills Commission data is showing signs that a small number of businesses are rehiring	13
In Brief COVID-19: NAB's May business sentiment survey found that though confidence levels have improved for a second consecutive month, they remain at a level last seen in the 1990s recession	13
In Brief COVID-19: CBA data shows early signs that the economy is stabilising and recovery is underway	13
In Brief COVID-19: It's not over yet? The AFR reports that McKinsey has said that management needs to remain agile its decision making processes, and that it would be premature to go back to pre-pandemic mode. Reportedly, McKinsey says that companies may shift to quarterly planning, forecasting and budgeting to enable them to rapidly respond to the ongoing challenges arising from the pandemic	13
Boards and Directors __	14
Top Story Centralised business registers and DINs are on the way: The legislative package introducing the reforms has passed both houses	14
Remuneration __	18
COVID-19: ASIC information sheet on board oversight of executive variable pay during the pandemic released (INFO 245)	18
Regulators __	21
COVID-19: ASIC has released an interim corporate plan and revised indicative timeline for the release of key guidance and consultations in the period through to Q2 2020	21
ASIC has released its Cost Recovery Implementation Statement 2019-20 for feedback, the FPA has questioned the proposed 38% increase for financial planners	25
In Brief APRA funding Bills update: The package of seven Bills proposing to enable the Commonwealth to recover the costs of a wider range of APRA's activities from prudentially regulated entities, and to increase the statutory upper limit from \$1.5m to \$10m, has progressed to second reading stage in the Senate	25
Financial Services __	26

COVID-19: ASIC puts Managed Investment Scheme 'on notice' to ensure advertising and disclosure is 'clear, balanced and accurate'	26
COVID-19: So far funds have paid out \$14.8bn under the early release of superannuation scheme	27
COVID-19: ASIC has registered an amending instrument to specify end dates for temporary capital raising and financial advice instruments	27
Raising the 'bar for professionalism within the financial services industry': All NAB and BNZ employees to complete a new professional qualification for bankers.....	28
In Brief FASEA Bill update: Treasury Laws Amendment (2019 Measures No 3) Bill 2019, the Bill which defers the transitional timeframes for existing financial advisers to comply with education and training requirements, has finally passed both Houses after the Senate did not insist again on Centre Alliance amendments.....	29
In Brief Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 which would enable employees under workplace determinations or enterprise agreements to choose their superannuation fund, has progressed to second reading stage in the Senate	29
Risk Management ____	30
CLIMATE RISK.....	30
Fortescue Metals sets net-zero by 2040 emissions target.....	30
COVID-19: bp expects the pandemic to 'accelerate the pace of transition to a lower carbon economy and energy system'	30
In Brief Climate risk is a risk to actuarial quality: The Joint Forum on Actuarial Regulation has updated its Risk Perspective to include climate change for the first time. Climate Related Risk was identified 'as the top 'hotspot', potentially the 'defining risk of our times'	30
In Brief The AFR reports that ANZ Chief Economist Richard Yetsenga has called on government to take immediate action to address climate change on the basis that it poses a 'grave financial risk'.....	31
SUPPLY CHAIN.....	31
Committed to boycotting conflict gold: The Perth Mint has issued a statement welcoming the LBMA's proposed review of its responsible sourcing processes and confirming that it is 'confident in its adherence to the highest ethical standards'	31

COVID-19 Key Developments

COVID-19: Prime Minister says infrastructure investments and deregulation will be key planks in the government's five year recovery plan

Key Takeouts

- The Prime Minister has said that economic recovery from the pandemic is set to take at least two years. The government is aiming to have the economy 'back on track', and growing again by 2025.
- No extension of COVID-19 support measures planned: The Prime Minister said that extension of existing COVID-19 support measures would not be a 'wise or responsible course'. Rather, the government's plan is based on controlling costs and implementing pro-growth policies aimed at job creation to bring the budget back into balance.
- Infrastructure and deregulation are 'critical' elements in the government's five year JobMaker economic recovery plan.
- On the deregulation front the Prime Minister said that:
 - Streamlining the approval process under the Environment Protection and Biodiversity Conservation Act 1999 is one area of focus. The government is aiming to cut approval times to 30 days for major projects and aims ultimately, to move to 'single touch approvals'.
 - The Prime Minister also flagged that the modernisation of existing laws around 'business communication' to reflect the role of technology is also being considered. Mr Morrison said, 'COVID has shown that our laws have not kept pace with digital technology when it comes to business communications - for example, by requiring business to use paper for storing information, instead of using electronic delivery or adopting new technologies like blockchain. These laws, too, are ripe for modernisation'.

[Note: Department of the Prime Minister and Cabinet has issued a [statement](#) confirming in line with the Prime Minister's statement that this will be an immediate area of focus for the deregulation taskforce. The Governance Institute has welcomed the move. This is covered in more detail in the next post in this issue of the news.]

 - The Prime Minister flagged that the Deregulation Taskforce will be brought into the Prime Minister's department.
 - The Productivity Commission has been tasked with informing and developing a 'Federation wide deregulation agenda'. Productivity Commission Chair Michael Brennan has been asked to brief the national cabinet on priority areas at the next meeting.
- In terms of infrastructure investment Mr Morrison said that the Federal government is working with state, territory and local government to 'inject additional investment' totalling close to \$7.8 billion into various projects. 15 major projects will be fast-tracked for approval under a new bilateral model between the Commonwealth, states and territories:

Overview

In his address to the CEDA conference, Prime Minister Scott Morrison spoke about the success of the government's approach to managing the health aspect and limiting the economic impact of the COVID-19 pandemic, and talked about the government's five year JobMaker plan which the Prime Minister said, 'charts the way forward for a new generation of economic success'.

Mr Morrison highlighted infrastructure investment and deregulation as key aspects of the government's five year JobMaker plan.

Key Points

- **The government's response to the pandemic has limited both the health impacts and the economic impacts:** Mr Morrison said that the government's approach to managing the health aspect of the pandemic has been successful not only in achieving 'enviable health outcomes' but in limiting the economic impact of COVID-19. This, he said, puts the country in a position to 'emerge more quickly and strongly' than other countries.

- **It will take at least two years for the economy to return to where it was pre-pandemic:** Mr Morrison said that compared with the mid-year update, \$100 billion has been lost this year meaning that it will take at least two years for the economy to recover to pre-pandemic levels. The government's five year plan is aimed at putting the country on track to 'beat the expected pre-COVID-19 GDP by 2025'.
- **Re-think of expenditure is required, funding to 'essential services' not in doubt:** The government remains committed to 'essential services and addressing the further needs in aged and disability care'. This expenditure where carefully planned and controlled will support growth and it will boost confidence'.
- **No plans to extend COVID-19 support measures – extending them would not be a 'wise or responsible course':** The Prime Minister said that the government must be 'extremely cautious about our expenditure, especially as we navigate our way back from the record fiscal supports now in place. There will always be a case made for spending more and for spending longer, and there are plenty who are happy to make that case. But it is not a wise or responsible course. Such a path is dangerous and will prejudice medium and longer term capacity to deliver on core essential services like health, hospitals, schools, education, the pharmaceutical benefits scheme, our Social Security supports. Over-extending on the fiscal supports puts those longer term and medium term supportive services at risk'. Mr Morrison said that keeping expenditure 'under control' and 'boosting revenues through pro-growth policies that lift investment and get Australians back into jobs, just like we did it last time' would bring the budget back into balance. 'Neither excessive austerity, nor higher taxes are the path that our Government will pursue. We will pursue growth and responsible budget management that ensures that governments live within their means and guarantee the essentials Australians rely on, as ever.'
- **Infrastructure development will play a 'critical role' in the government's JobMaker plan,** Mr Morrison said. The government has already committed \$180 billion on economic infrastructure over the next decade, with more than half allocated across the four years of the forward estimates. The Commonwealth will have invested more than \$24 billion for infrastructure across key government portfolios by the end of financial year and the government plans to increase this as we move into 2020-21. Mr Morrison said that the Federal government is working with state, territory and local government to 'inject additional investment' totalling close to \$7.8 billion into various projects. As part of this package, \$1 billion will be allocated to 'priority projects' that are 'shovel ready' eg \$500m has been allocated to road safety works. Mr Morrison said that further announcements on specific projects 'will be made soon'.
- **Deregulation – 'cutting approval times' under the EPBC Act to speed up progress:** The Government plans to speed up the approvals process under the Environment Protection and Biodiversity Conservation Act 1999. Mr Morrison said that departmental estimates indicate that delays associated with these approvals cost industry over \$300 million in 2019. Though the government has made progress in cutting approval times – the average time taken to approve decisions has fallen from 90 days in 2019 to 40 days now – the government aims to cut this back to 30 days for major projects. 'Ultimately, our objective is the streamlining of Commonwealth and state processes to a point of "single touch approvals" Mr Morrison said. Mr Morrison said that the National Cabinet 'will come back to this issue very shortly, informed by the current review of the EPBC Act' currently being conducted'.
- **15 major projects to be fast-tracked for approval under a new bilateral model between the Commonwealth, states and territories:** Mr Morrison announced that 15 projects worth more than \$72 billion will be 'fast tracked' for approval under a new 'bilateral model' between the states, territories and the Commonwealth. The priority list includes:
 - Inland Rail from Melbourne to Brisbane;
 - Marinus Link between Tasmania and Victoria;
 - Olympic Dam extension in South Australia;
 - Emergency town water projects in New South Wales; and
 - Road, rail and iron ore projects in Western Australia.
- **Deregulation taskforce:** Mr Morrison said that the government's deregulation taskforce will shift its focus to areas to assist COVID-19 economic recovery. To that end, the taskforce will be brought into the Department of Prime Minister and Cabinet as part of the government's JobMaker agenda. This will 'drive a whole of government approach to how regulatory policy is prosecuted' Morrison said. Mr Morrison also identified some areas of focus for the deregulation taskforce including:
 - harmonisation of occupational licensing and registration requirements across states/territories
 - greater mutual recognition of qualifications and 'improved information flows between jurisdictions'
 - modernisation of existing laws around 'business communication' to reflect the role of technology. Mr Morrison said, 'COVID has shown that our laws have not kept pace with digital technology when it comes to

business communications - for example, by requiring business to use paper for storing information, instead of using electronic delivery or adopting new technologies like blockchain. These laws, too, are ripe for modernisation'.

- **'Culture of the regulators' will also be a focus:** Mr Morrison said that the government is not only focused on deregulation, but on the 'culture of the regulators'. 'Our focus applies as much to the culture of regulators as it does to the content of regulations. I'm sure anyone in business would understand that point. This crisis has shown what can be achieved when regulators are pragmatic and responsive, solving problems without compromising safeguards' Mr Morrison said. 'Mr Morrison said that Assistant Minister Morton has been tasked with reporting back to the government on 'lessons learned' from the pandemic response, highlighted instances where governments and regulators 'have responded to the COVID crisis and its economic fall out with urgency and common sense'.
- **The Productivity Commission will be tasked with informing and developing a 'Federation wide deregulation agenda'.** Mr Morrison said that 'unity of purpose' among the national cabinet is necessary to the government's recovery plan and has been working so far. 'It's amazing what unity and purpose can do and we want to keep that going' he said. To that end, the Productivity Commission has been asked to develop a 'Federation wide deregulation agenda'. Productivity Commission Chair Michael Brennan has been asked to brief the next National Cabinet meeting on priority areas.

[Source:: Prime Minister Scott Morrison, Transcript of speech: CEDA's state of the Nation Conference 15/06/2020]

Response

- **Concerns over the environmental impact of cutting approval times:**
 - The Guardian reports that scientists have raised concerns about rolling back 'green tape' in the wake of the recent bushfires and the 'extinction crisis'. It's suggested that if approval times are to be accelerated, conservation assessments, environmental assessments, the implementation of threatened species action plans also needs to be speeded up and resourced appropriately.
 - The SMH reports that the Federal Government's push to streamline approval times has led to concerns about the possible environmental impacts of two NSW dam projects.
- **Concerns that cutting approval times could increase risks for construction projects:** Writing in The Conversation, Martin Loosemore (Professor of Construction Management, University of Technology Sydney) raises concerns that a 'fast track approach' could generate risks especially if 'community needs' are not sufficiently taken into account.

[Sources: The Guardian 16/06/2020; The Conversation 15/06/2020; The SMH 16/06/2020]

COVID-19: The Department of the Prime Minister and Cabinet has identified modernising business communications as an immediate priority, the Governance Institute has welcomed plans to 'explore' making legislation technology neutral

In line with the Prime Minister's [speech to the CEDA conference](#) (outlined above), the Department of the Prime Minister and Cabinet issued a statement confirming that the Deregulation Taskforce will prioritise two areas: 1) modernising business communications; and 2) improving occupational mobility.

Modernising Business Communications

The statement says that the Taskforce will examine state and Commonwealth legislation that can be made 'technology neutral', to remove barriers to the adoption of new technology, to bring laws into line with the way "Australians engage with digital communications" and to minimise compliance costs. Laws that will be reviewed include (among others), The Electronic Transactions Act 1999 (ETA).

The statement says that 'in order to reduce business costs and better reflect the way Australians want to engage and communicate, the Deregulation Taskforce will work with business and consumers to identify and address these issues, and with state and territory governments to explore complementary reforms'.

Improving Occupational Mobility

The taskforce will also explore options to introduce greater mutual recognition of qualifications and 'improved information flows between jurisdictions' to harmonise occupational licensing and registration requirements across jurisdictions.

The statement says that the government is looking to partner with state and territory governments to progress the work.

The purpose, the statement says, is to 'let business access skilled workers more quickly and provide more opportunities for people such as builders, trades workers, and architects and engineers. It will also facilitate labour movement across borders in response to disasters, such as bushfires'.

Response: The Governance Institute has welcomed the government's review of business communications

The Governance Institute has welcomed the government's announcement and in particular, the 'increased scrutiny of the legislation covering digital communication which is often criticised as being out of date and out of touch'.

Governance Institute CEO Megan Motto expressed hope that the Taskforce's work will lead to 'significant improvements to the delivery of communications' including changes to enable the electronic distribution of meeting notices. Ms Motto said that it is an 'exceptional chance for some real reform of digital communications and we look forward to some positive, permanent steps'.

[Sources: Department of Prime Minister and Cabinet media release 15/06/2020; Governance Institute statement provided via email 16/06/2020]

COVID-19: AICD report finds most directors support a rethink of the pre-pandemic economic agenda

Key Takeouts

- The Australian Institute of Company Directors (AICD) [survey](#) of more than 2300 directors found that the majority (68%) would prefer the government to adapt its economic policy agenda to ensure alignment with the post-pandemic environment. Likewise, respondents would prefer a gradual phasing out of health restrictions and support measures (as opposed to a rapid end).
- The top three areas where respondents consider the government should focus its policy efforts over the next six months were ranked as: 1) the introduction of pro-growth, pro-innovation policy settings (69%); 2) the option to hold virtual meetings on an ongoing basis; and 3) a 'pause on all new regulation' (42%).
- Commenting on the survey results, AICD CEO and Managing Director, Angus Armour said the results underline the need for government to ensure policy settings are targeted at supporting a strong and sustainable recovery. Mr Armour said, 'Now more than ever, Australia needs a policy agenda that supports sustainable growth - including energy/climate change policy and tax reform - and a regulatory environment that encourages risk-taking and innovation.'

Overview

The Australian Institute of Company Directors (AICD) has released the findings of member survey, conducted over the period 18 May 2020 to 2 June 2020, into the impacts of COVID-19.

The survey is broken into two parts.

- The first is focused on how organisations responded to the pandemic and member attitudes to the usefulness of various support measures.
- The focus of the second is on members' outlook for the period June to December and on member views about how the COVID-19 recovery should be managed, including how support measures should be wound down, and where policy efforts should be focused to best support organisations in their own recovery efforts.

Response to COVID-19 disruption

Top COVID-19 challenges?

- Survey participants ranked: 1) the impact of the government lockdown; 2) disruption to the workforce; 3) changes in behaviours of staff/clients; 4) managing workplace health and social distancing requirements; and 5) managing legal and regulatory requirements as the top five challenges their organisations have faced.
- Almost all (90%) respondents viewed the impact of the government lockdown as the most challenging issue their organisations faced.

- Though managing legal and regulatory challenges ranked as the fifth greatest challenge for organisations, with almost three quarters of respondents (72%) indicating they found it challenging to some degree, 38% of respondents indicated in a subsequent question that their organisation faced no major regulatory challenges. The AICD suggests that this may be explained by the swiftness with which emergency measures were implemented by both government and regulators. Otherwise, respondents nominated complying with employment and WHS laws and industry specific regulation as their greatest regulatory challenges.
- Interestingly, reduction in turnover and demand was ranked near the bottom of the list, with 20% of respondents indicating that they did not consider this challenging and 40% of respondents indicating they viewed it as only 'somewhat challenging'.
- The technical/logistical challenges of remote working were seen as the least challenging issue (of the available list of options). 32% of respondents did not view the issues as challenging and almost half (49%) viewed it as only 'somewhat challenging'.

Impact on staffing

The majority (60%) of organisations have implemented cost saving measures of some kind.

- Over a third of respondents (34%) said their organisation had reduced staff hours and almost a quarter (24%) said that their organisation had reduced executive remuneration.
- 16% of respondents indicated that director fees had been reduced.
- Less than a quarter of respondents (21%) said that staff had been stood down and 15% said that staff had been made redundant. Redundancies were a more common measure taken by listed companies as compared with large private companies, SMEs or NFPs.
- Positive impact: A relatively small proportion of respondents overall (10%), mostly in the government/public sector, said that more staff had been hired and 9% indicated that staff hours had been increased. The report suggests this is reflective of the increased demands on government during the pandemic.
- Zero impact: 40% of respondents indicated that the pandemic has had no impact on staffing levels and is not expected to have any impact. The figure is higher in the public sector/government at 49%. The AICD considers this to evidence of the effectiveness of the JobSeeker scheme in assisting organisations to weather the 'the worst of the impact'.

Going concern and solvency

- 50% of respondents indicated that they had no concerns about making going concern or solvency assessments because of the impacts of COVID-19 disruption on their organisation. However, 39% were somewhat or very concerned.

Impact of temporary insolvency relief measures

- 50% of respondents do not consider that the temporary six month relief from personal liability for trading while insolvent has had no impact.
- 12% of respondents consider it has to a moderate or great extent influenced their board's decision making on whether to trade through. The proportion is higher among SMEs at 16%.

The AICD considers the results to be an indicator that the temporary measure has achieved its policy objective in providing a 'safety net for directors', though the report also flags that many companies are likely to face difficult decisions when the government's temporary relief measures (eg JobKeeper) expire in September. The report suggests that, 'the temporary relief may also provide impetus for a broader rethink of Australia's insolvency settings as the economy looks to recover from the COVID 19 shock'.

Financial Reporting

- Though only 6% of respondents nominated managing financial reporting obligations, including reporting deadlines, as a key regulatory challenge for their organisation, 28% of members from organisations with 30 June financial year ends (and 33% of listed companies) indicated that they anticipate 'some or significant problems' with meeting their reporting obligations due to COVID-19.
- 72% of respondents anticipated no problems with meeting financial reporting obligations.

Most effective COVID-19 support measure

- The top ranked measure was the JobKeeper scheme: 44% of respondents nominated that the JobKeeper scheme, of all COVID-19 policy measures, to have been the most effective (ie to have provided the greatest relief) during the pandemic. This figure was higher among SMEs and NFPs with 47% of SMEs and 51% amongst NFPs nominating it as the most effective relief measure.
- 37% of respondents said that the government's policy measures had made little or no difference to their organisation.
- 7% of respondents from listed organisations, and 9% from large private organisations identified that Reserve Bank of Australia (RBA) policies aimed at lowering borrowing costs and maintaining supply of credit had been the greatest assistance.

Outlook for June to December 2020

Top challenges facing organisations over the next six months

- Respondents nominated: 1) uncertainty about the Australian economy (64%); 2) managing new health/safety requirements when staff return to work (44%); 3) uncertainty about the global economy (36%); 4) uncertainty about state/territory policy settings (34%); and 5) uncertainty about national policy settings (29%); as the top challenges.
- Respondents are least concerned about: insolvency/risk of insolvency (11%), financial reporting (5%) and director liability promoting risk aversion (5%).

Workforce: outlook over the next six months

- On average, respondents said that they expect their organisations to run at 84% capacity over the next six months, compared to pre-COVID-19 levels.
- 44% of respondents expect to reduce staffing levels over the next six months, with 31% of respondents indicating that staffing levels will be between 75-99% as compared with pre-COVID-19 levels. 8% of respondents anticipate that staffing levels will be reduced by between 50-75%.
- 38% of respondents said they expect staffing levels to remain unchanged/be maintained at 100%.
- 6% of respondents said that it was too early to tell.
- 13% of respondents (increasing to 26% for public sector/government respondents) expect their organisation to increase staffing levels over the next six months.

Strategic priorities over the next six months

- Respondents ranked: 1) addressing uncertainty around cash flow and customer demand (27%); 2) adapting workplace/office conditions for physical distancing and health requirements (17%); and 3) relationships with customers (14%) and transforming operating models (also 14%) as their top strategic priorities over the next six months.
- Diversifying product/service offerings (9%), lifting technology/innovative capability (6%) and workplace relations (including adjustments to workforce levels/hours) (3%) were seen as less of a priority.
- Diversifying supply chains and lifting technology/innovative capability tied for last place, with only 2% of respondents nominating these challenges as their top priority over the next six months.

Where should the government focus its efforts?

- The top three priorities were: 1) the introduction of pro-growth, pro-innovation policy settings (69%); 2) the option to hold virtual meetings: 47% of respondents overall, and 59% of respondents from listed organisations, want the government to permanently amend the Corporations Act to give them the option to hold virtual AGMs on an ongoing basis; and 3) a 'pause on all new regulation' (42%).
- 28% of respondents consider that a 'rethink of director liability settings' should be prioritised.
- 21% of respondents nominated the expansion of the insolvency safe harbour.
- A ban on securities class actions (10%) and the removal of the two strikes rule (5%) were ranked at the bottom of the list

Approach to COVID-19 recovery – gradual phase-out/wind down is the preferred approach

- The majority (79%) of respondents support a gradual phase out of government health restrictions to minimise the chances of outbreaks as opposed to rapidly lifting restrictions/support measures.
- 81% of respondents would prefer to see a gradual phasing out of government support/relief measures eg JobKeeper.
- Support for the government adapting its pre-pandemic agenda to align with the new environment: 68% majority considered the government should 'radically rethink its agenda' to ensure Australia's economic policy approach is aligned with the needs of the post-pandemic environment. Only 4% of respondents believe the government should try to delivery on its pre-COVID-19 policy agenda (as opposed to adapting to the new conditions). 28% of respondents overall, and 36% of respondents from listed entities, consider that the government should implement long-standing economic reforms that have not, to date, been implemented for lack of political will eg reducing corporate tax, lifting the GST.

Commenting on the survey results, AICD CEO and Managing Director, Angus Armour said the results underline the need for government to ensure policy settings are targeted at supporting a strong and sustainable recovery. Mr Armour said,

'Now more than ever, Australia needs a policy agenda that supports sustainable growth - including energy/climate change policy and tax reform - and a regulatory environment that encourages risk-taking and innovation.'

'We need to actively create an environment where diligent directors are enabled to pursue new business models and technologies, accepting the risks involved. Our current director liability framework, which is burdensome by international standards, works against this. Our position as the second most attractive market in the world for litigation funders also works against directors and companies taking sensible risks to grow their organisations.'

[Sources: AICD media releases 11/06/2020; [accessed via Capital Monitor] 11/06/2020; AICD summary report; sector by sector results; [registration required] The AFR 11/06/2020; [registration required] The Australian 10/06/2020]

COVID-19: Unlikely many of us will opt for a tree change post-pandemic? NAB report casts doubt on predictions that the pandemic will lead to immediate, wholesale behavioural change

NAB has released the [results of a survey](#) of 2000 Australians, conducted during the last two weeks in May, into the impact that the pandemic has had on behaviour and the possible longer term impacts it may have.

Among other things the report is sceptical that the pandemic will lead to immediate, large-scale change in behaviours. The report states:

'Humans are not generally disposed to radical departures from their daily routines. When confronted with a crisis like a pandemic, it's all too easy to believe that everything will change. But, human behaviour does not change quickly. Many of the more sensationalist predictions are likely to be highly inaccurate.

For example, the report casts doubt on the prediction that a large proportion of people are considering a permanent shift away from cities to regional areas post-pandemic on the basis that they will now be able to work from home finding that only a small proportion of people indicated an intention of doing so.

Areas where incremental change is likely?

Behaviours that might change post-pandemic identified in the report include (among others): a) spending habits – people indicated that they are more likely to shop online; b) people are less likely to spend time on public transport, in shopping centres or eating out; c) people want to save more for emergencies; and d) people are more likely to expect to be able to work from home on an ongoing basis.

[Source: NAB special coronavirus report 15/06/2020]

COVID-19: Temporary changes to the 'access period' will be wound back in line with the easing of other COVID-19 restrictions

Context: On 16 April, the government introduced a temporary measure – [The Fair Work Amendment \(Variation of Enterprise Agreements\) Regulations 2020](#) – to enable changes to be made to enterprise agreements more quickly

during the pandemic. The regulations shorten the access period (ie the period required to be given to employees to consider a proposed variation of an enterprise agreement) from seven calendar days to one calendar day.

Review of the measure: The Attorney General said that a review of the temporary measure, conducted by his department, found that:

- the regulation has been used 23 times
- in approximately two thirds of cases, employees were afforded three or more days to consider changes.
- there were zero cases of misuse by employers

The review concluded the measure is no longer required and that the original seven day access period should be reinstated.

Attorney-General and Minister for Industrial Relations, Christian Porter, said that the measure will now be rolled back in line with the easing of other restrictions. 'This was only ever intended to be an immediate, temporary measure designed to assist businesses during the peak of the pandemic and it is clear to me that it has served its purpose and can be withdrawn which will reinstate the usual seven day access period' he said.

[Source: Attorney General Christian Porter media release 11/06/2020]

COVID-19 Recovery Planning: Membership of IR working groups and timing of the first round of meetings announced

Attorney General Christian Porter has announced that the government has finalised the membership of the five industrial relations working groups that have been tasked with 'finding ways to urgently regrow jobs' lost as a result of the pandemic.

Each of the groups will have ten full time members (five employer and five employee representatives). In addition, third party organisations and individuals will be invited to present to/advice the groups on relevant issues on an ad hoc basis, as determined by the ten primary members of each working group.

The Attorney-General will Chair the first rounds of meetings of all groups and will be assisted by deputy chair former state Treasurer, Tim Marney.

The membership of each of the five groups is as follows.

GROUP	MEMBERSHIP	FIRST ROUND MEETINGS
Compliance enforcement and	<ul style="list-style-type: none"> ▪ Employer organisations: Australian Chamber of Commerce and Industry (ACCI), Ai Group, National Farmers Federation (NFF), Council of Small Business Associations of Australia (COSBOA), Australian Hotels Association (AHA). ▪ Unions: Australian Council of Trade Unions (ACTU) (two representatives), Finance Sector Union (FSU), Australian Services Union (ASU), Independent Education Union (IEU). 	The group will begin meeting from 22 June.
Greenfields agreements for new enterprises	<ul style="list-style-type: none"> ▪ Employer organisations: ACCI, Australian Mines and Metals Association (AMMA), Minerals Council of Australia (MCA), Australian Constructors Association (ACA), Master Builders Australia (MBA). ▪ Unions: ACTU, Construction Forestry Mining Maritime and Energy Union (CFMMEU), AWU, Australian Manufacturing Workers Union (AMWU), Electrical Trades Union (ETU). 	The group will begin meeting from 22 June.
Casuals and fixed term employees	<ul style="list-style-type: none"> ▪ Employer organisations: ACCI, Ai Group, COSBOA, Australian Retailers Association (ARA), Australian Higher Education Industrial Association. ▪ Unions: ACTU, National Tertiary Education Union (NTEU), Australian Nursing and Midwifery Federation (ANMF), 	The group will begin meeting from 29 June.

GROUP	MEMBERSHIP	FIRST ROUND MEETINGS
	United Workers Union (UWU), Health Services Union (HSU).	
Award simplification (covering Awards in industry sectors heavily impacted by COVID-19)	<ul style="list-style-type: none"> Employer organisations: ACCI, Ai Group, COSBOA, Australian Hotels Association (AHA), National Retail Association (NRA). Unions: ACTU (two representatives reps), United Workers Union (UWU), Australian Workers Union (AWU), Shop Distributive and Allied Employees Association (SDA). 	The group will begin meeting from 29 June.
Enterprise making agreement	<ul style="list-style-type: none"> Employer organisations: ACCI, Ai Group, AMMA, Australian Resources and Energy Group, Business Council of Australia (BCA), Master Builders Australia (MBA). Unions: ACTU, SDA, Community and Public Sector Union (CPSU), Transport Workers Union (TWU), Electrical Trades Union (ETU). 	The group will begin meeting from 29 June.

Timeline: The timeline for delivery of recommendations from each group remains unchanged from the original [announcement](#). 'It is hoped that each group will be able to reach a consensus by September on the best way forward that can then be put in place by government, either through legislation or regulation'.

[Source: Attorney General Christian Porter media release 11/06/2020]

COVID-19: European Commission has launched a review of trade policy in light of the changed operating environment, including the role trade policy should play in supporting the 'green transition'

European Commission has commenced a review of trade policy in light of the changed operating environment and the global challenges facing the European Union. As part of the review process, the Commission has sought feedback on key issues, among them, the question of how trade policy can support the 'green transition' and make trade 'more sustainable and responsible'.

The Commission states,

'The Covid-19 pandemic has not stopped climate change, biodiversity loss or unsustainable levels of resource use. On the contrary, addressing them remains a matter of priority. At the same time, there is a real risk that the focus on global economic recovery will neglect these issues. The EU is a global leader on climate action and sustainability, and the European Green Deal as Europe's growth strategy should act as its roadmap within the global recovery effort, supporting the transition to a climate-neutral and more sustainable economy. The Joint Communication on the Global EU response to COVID-199 underlined the importance of sustainability, and the respect of labour rights and corporate responsibility throughout value chains. Promoting decent work and improving working conditions at home and abroad remains a priority for the EU. In addition, the Commission is fully committed to the UN SDGs and is increasing efforts to integrate them into all its policies. The particular impact of the crisis on developing countries will require particular attention. Trade policy has an important role to play in this work'.

Questions for feedback on this issue include:

- How the multilateral trade framework (WTO) could be 'strengthened to ensure stability, predictability and a rules-based environment for fair and sustainable trade and investment'
- How trade policy can 'facilitate the transition to a greener, fairer and more responsible economy at home and abroad?'
- How trade policy can further promote the UN Sustainable Development Goals (SDGs)
- How trade policy can 'help to foster more responsible business conduct'
- The role trade policy should play in promoting transparent, responsible and sustainable supply chains
- How these objectives should be implemented and enforced

The results of the consultation will feed into a communication to be published towards the end of the year. The deadline for written submissions is 15 September.

[Sources: European Trade Commission media release 16/06/2020; Consultation paper: A renewed trade policy for a stronger Europe; Factsheet]

COVID-19: The AFR reports that National Skills Commission data is showing signs that a small number of businesses are rehiring

The AFR reports that National Skills Commission data indicates that the number of businesses cutting staff has dropped from 25% in April to 8% in May and the number of businesses cutting hours has also reduced. Likewise, the National Skills Commission also found that 6% of businesses are rehiring staff. The decline is reportedly attributed to the success of the government's COVID-19 support measures and to increased optimism with the lifting of COVID-19 restrictions.

Reportedly, Employment Minister Michaelia Cash has welcomed the numbers as a sign of growing business confidence. Reportedly Minister Cash has said that the numbers should further improve as restrictions are lifted.

[Source: [registration required] The AFR 11/06/2020]

In Brief | COVID-19: NAB's May business sentiment survey found that though confidence levels have improved for a second consecutive month, they remain at a level last seen in the 1990s recession

[Source: NAB monthly business survey – May 2020 09/06/2020]

In Brief | COVID-19: CBA data shows early signs that the economy is stabilising and recovery is underway

[Source: CBA media release 16/06/2020]

In Brief | COVID-19: It's not over yet? The AFR reports that McKinsey has said that management needs to remain agile its decision making processes, and that it would be premature to go back to pre-pandemic mode. Reportedly, McKinsey says that companies may shift to quarterly planning, forecasting and budgeting to enable them to rapidly respond to the ongoing challenges arising from the pandemic

[Source: [registration required] The AFR 16/06/2020]

Boards and Directors

Top Story | Centralised business registers and DINs are on the way: The legislative package introducing the reforms has passed both houses

The package of legislation that will introduce a new director identification number (DIN) requirement, and centralise and streamline access to business registers passed both houses on 12 June without amendment.

Key Takeouts

- The legislative package does two things: a) it creates a new Commonwealth Business Registry Regime which will centralise and modernise business registers; and b) it introduces a director identification number (DIN) requirement which will require directors to register (with proof of identity) to receive a unique identifier which they will then keep (whether or not they continue to be a director).
- An anti-phoenixing measure: The new DIN requirement is intended to 'provide traceability of a director's relationships across companies, enabling better tracking of directors of failed companies and will prevent the use of fictitious identities'.
- Timing: The Commonwealth Registers Bill 2019 commences the day after Royal Assent and the remainder of the new registry regime will commence two years after Royal Assent or on such earlier date as proclaimed by the Governor-General. The new DIN requirement will commence on a day/days to be fixed by proclamation (or within two years from the day the Act receives Assent).

[Note: The [AFR reports](#) that the new DIN requirement is expected to apply from the 'first half of 2021' once the new application system has been finalised.]

Overview

Five Bills – 1) Commonwealth Registers bill 2019; 2) Treasury Laws Amendment (registries Modernisation and Other Measures) Bill 2019; 3) Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019; 4) Corporations (Fees) Amendment (registries Modernisation) Bill 2019; and 5) National Consumer Credit Protection (Fees) Amendment (registries Modernisation) Bill 2019 – passed both Houses without amendment on 12 June.

The legislative package does two things:

- creates a new Commonwealth Business Registry Regime which will centralise and modernise business registers
- Schedule 2 to the Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 introduces a director identification number (DIN) requirement.

A new centralised Commonwealth business registry regime to streamline registry services and increase efficiency

The legislative package creates a new Act, the Commonwealth Registers Act 2019, and makes related amendments to a range of existing laws to create a new Commonwealth business registry regime.

In her second reading speech, Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume summed up the purpose of the reform as being to both modernise and improve the effectiveness of registry services. Senator Hume said that the legislative package provides,

'legislative flexibility for the government to modernise Australia's business registers onto a single platform to be administered by the Australian Business Register, within the Australian Taxation Office. Modernising the business registers will address registry fragmentation, improve business user experience, reduce risks of ongoing operating, foster data-driven innovation and enable better use of registry data. The IT infrastructure underpinning Australia's business registry services has been found wanting and needs to be upgraded to meet current and future demands'.

Initial scope of the new regime

Initially 34 business registers administered by the Australian Securities and Investments Commission (ASIC) and the Australian Business Register which is currently kept by the Commissioner of Taxation will; be included. Additional government registers may be brought into the regime by future legislative reforms.

Administration of the new regime

The new regime will be administered by a registrar (which will be 'an existing Commonwealth body' appointed by the minister).

The registrar will be able to make data standards on matters relating to the performance of their functions and the exercise of their powers, including on matters relating to the collection, maintenance and disclosure of information. The explanatory memorandum gives a number of examples of what the data standards may cover including: what information will be collected; the type of information which may be collected; how the information will be collected; the form in which information will be submitted; how information will be authenticated; the correction of information; the storage of information; and the integration of linking of information.

The explanatory memorandum states that enabling the registrar to make data standards (by way of legislative instrument) in this way is intended to increase the efficiency of registry services.

'Data standards can be readily amended over time to keep up with changes in best practice, industry preference, the needs of those using registry services, and technology. The flexibility offered also enables a 'tell us once' approach to the collection of information, minimising the number of interactions clients have with the registrar. Currently, a reporting entity may have to provide the same information to multiple registers, increasing regulatory burden and the cost of administering registry services'.

Protection and disclosure of information – new offence for unauthorised disclosure/recording of information

The Commonwealth Registers Bill will regulate the disclosure of 'protected information' – ie information obtained by an official in the course of their employment and obtained/disclosed under the legislation or under another law in connection with particular functions or powers of the registrar - including the circumstances in which information may/may not be disclosed and who it may be disclosed to.

The legislation also creates an offence for an official to record or disclose information held by the registrar unless authorised to do so by the registrar. The maximum penalty for disclosing registry information in breach of this offence provision is imprisonment for two years.

A defendant carries an evidential burden for establishing that a recording or disclosure of registry information was authorised. To satisfy this requirement, the defendant must be able to point to evidence that suggests a 'reasonable possibility that the recording or disclosure was authorised'.

The explanatory memorandum states that a recording or disclosure will be authorised if it was: a) for the purposes of the new registry regime; b) happened in the course of the performance of an official's duties; c) each person to whom the information relates consented to the disclosure; d) the information was disclosed to a government agency for the performance of its functions; or, e) the benefits associated with the disclosure outweigh the risks (including privacy risks) after those risks have been mitigated.'

The purpose of authorising disclosure to a government entity is intended, the explanatory memorandum state, to ensure 'real time access' to registry information. For example it will mean that ASIC has access to real-time registry information necessary to exercise its regulatory functions or powers.

Under the changes the Minister; the registrar, including its staff and members; a delegate of the registrar, including its staff; and, employees and officers of Commonwealth bodies 'have statutory immunity for acts done in good faith in connection with the new registry regime'.

Ability to apply to prevent the disclosure of registry information

The legislation also allows a person to apply to the registrar to prevent 'inappropriate disclosure' of registry information that relates to them.

The explanatory memorandum states that 'The data standards may provide for how such applications are to be made and decided. However, where the registrar is satisfied that the disclosure is not appropriate, the disclosure is taken to not be in accordance with the disclosure framework'. '

Decisions reviewable by the AAT

All decisions made by the registrar under the new regime are subject to merits review by the Administrative Appeals Tribunal, except decisions made by legislative instrument. This includes decisions made by the registrar under the data standards or disclosure framework.

Regulatory implications?

The explanatory memorandum states that only 'registry functions' are being transferred to the registrar. These include: a) receiving registry information (including information contained in applications for registration) from registrants; b) recording that information (and telling the registrant when that record has been made); c) receiving updates of registry information from registrants, including through the initiation of processes, such as annual reviews, to update registry information; and e) making decisions about registry information, including the removing of records, and associated internal review of those decisions.

As such, ASIC's regulatory functions and powers are not intended to be impacted by the changes. The explanatory memorandum states that"

'only "registry" aspects of the current law are brought into the new registry regime and therefore affected by the present amendments. 'Regulatory' functions and powers are not affected by the new law and continue to be administered by the body that currently administers those functions and powers. This means that for regulatory functions and powers there is no change to the way in which the present law operates, including how the relevant regulator interacts with the entities it regulates or how information flows between them'.

The explanatory memorandum states that 'registry provisions tend to relate to the establishment, maintenance and use of registers while regulatory provisions tend to relate to things such as monitoring and enforcing the law and licencing and registering market operators and financial service providers'.

New Director Identification Number (DIN) requirement

Schedule 2 of Treasury Laws Amendment (Registries Modernisation and Other Measures) Bill 2019 introduces a new director identification number (DIN) requirement.

Under the changes, directors of bodies corporate registered under the Corporations Act 2001 or Corporations (Aboriginal and Torres Strait Islander) Act 2006 will be required to apply to the registrar for a permanent, unique director identification number. Each director will keep this identifier, even if they cease to be a director, and the same identifier will not be re-issued to any other person.

The registrar will be required to issue a director with a DIN, where they are satisfied the director's identity has been established. The legislation also gives the registrar powers to administer the new requirement including powers to: record DINs, b) cancel and reissue DINs; c) determine the numbering plan for the new requirement; and e) determine how directors are to establish their identity.

The explanatory memorandum states that 'The registrar is provided with little or no discretion in the exercise of most of these functions and powers. In particular, the registrar must give a person a DIN if that person is eligible to apply for a DIN and has established their identity to the satisfaction of the registrar. Likewise, the registrar cannot give a person a DIN or cancel a person's DIN without notifying the person'.

The registrar will also be able to exempt a person or class of persons from needing to obtain a DIN or provide them with additional time in which to apply for a DIN.

Why is the new requirement being introduced?

The new DIN requirement is intended to 'provide traceability of a director's relationships across companies, enabling better tracking of directors of failed companies and will prevent the use of fictitious identities'.

The primary aim of the new requirement is to make it easier to track unlawful activity, including phoenix activity, though it's also expected that it will have other benefits. For example: it is expected to reduce time/cost for administrators and liquidators by making it simpler to track directors and their corporate history.

New DIN obligations

Under the new DIN requirement, directors will be required to: a) apply for a DIN prior to be appointed as a director; b) required to apply for a DIN within a prescribed period of being directed to do so by the registrar; prohibited from knowingly applying for multiple DINs; and prohibited from misrepresenting a DIN to a government body or registered body.

Penalties for non-compliance

The legislation includes civil and criminal penalties for failure to apply for a DIN (within the required timeframe). The legislation also includes criminal penalties for: a) deliberately providing false identity information to the registrar, b)

intentionally providing a false DIN to a government body or relevant body corporate, or c) intentionally applying for multiple DINs.

The legislation also enables the registrar to issue infringement notices in relation to such conduct.

Commencement of the new DIN requirements

The new DIN requirement commences on a date set by proclamation or if the measures haven't commenced, two years after the date of Assent.

The Explanatory Memorandum states that,

'Each function and power in the new law does not apply until the function or power is assigned to the registrar. This means that the DIN requirement will not apply until the day (the application day) the Minister appoints a registrar to administer the new requirement.'

The [AFR reports](#) that the DIN is expected to apply from the first half of 2021.

Transitional arrangements

The Explanatory Memorandum states that:

'A person who is a director immediately before the application day must apply for a DIN within a period specified by a legislative instrument made by the Minister. Until this period is specified, there is no requirement on such directors to apply for a DIN'. ...

'A person who is appointed a director within the first 12 months of the new regime's operation with an additional 28 days to apply for a DIN. After this transitional period ends, the standard rule applies, that is, a director must apply for a DIN prior to being appointed as a director or within any later period as may be allowed by the regulations or the registrar'.

[Sources: Explanatory Memorandum; Commonwealth Registers bill 2019; Treasury Laws Amendment (registries Modernisation and Other Measures) Bill 2019; Business Names Registration (Fees) Amendment (Registries Modernisation) Bill 2019; Corporations (Fees) Amendment (registries Modernisation) Bill 2019; National Consumer Credit Protection (Fees) Amendment (registries Modernisation) Bill 2019]



Remuneration

COVID-19: ASIC information sheet on board oversight of executive variable pay during the pandemic released (INFO 245)

Key Takeouts

- Information Sheet 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic (INFO 245) has been informed by the findings in ASIC's review of remuneration governance practices at 21 ASX 100 companies and has been released ahead of ASIC's detailed report, in response to feedback that it would be useful in the current circumstances.
- The guidance suggests four ways that board oversight and the exercise of discretion on executive variable pay outcomes could be improved: 1) through the active, timely and consistent exercise of discretion; 2) by ensuring that boards/remuneration committees have access to the right information to make informed decisions; 3) by having appropriate arrangements in place to manage conflicts of interest; and 4) by clearly communicating (both internally and externally) the rationale for decisions on executive variable pay outcomes.

Overview

On 12 June, The Australian Securities and Investments Commission (ASIC) released [Information Sheet 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic \(INFO 245\)](#).

The information sheet is intended to provide high level practical guidance 'to support board oversight and the exercise of discretion on the variable pay outcomes of large listed companies' most senior executives (cash and/or equity)'.

The information sheet is focused on: a) the importance of 'a robust remuneration governance framework'; and b) specific factors for boards to consider in the context of exercising their discretion on variable pay at the current time.

Context

The guidance has been informed by the findings in ASIC's review of remuneration governance practices at 21 ASX 100 companies. ASIC plans to release a detailed report into the findings of its review into pay practices at a later date, but has released the information sheet now, in response to feedback that it would be valuable in the current circumstances for companies to understand some of the key findings and observations to support their decision making.

Why robust governance is critical

ASIC considers that decision making on variable pay, a 'key influencer of behaviour' can send 'strong signals' to both executives and investors about the type of performance and conduct that is being rewarded in the current rapidly evolving environment. The regulator views robust governance practices to be 'critical' to support both effective decision making and to maintain focus on the company's long term interests.

According, ASIC suggests that when considering whether to exercise discretion on variable pay, in light of the impact of the pandemic, boards should consider looking at whether the variable pay outcome: a) is consistent with the objectives of the company's variable pay framework; and 2) 'sends a timely signal of each executive's accountability for their conduct and performance at this time'.

Four ways for boards and remuneration committees to enhance the effectiveness of their oversight

ASIC considers that the effectiveness of board oversight and the exercise of discretion on executive variable pay outcomes could be enhanced in four key ways:

1. through the active, timely and consistent exercise of discretion;
2. by ensuring that boards/remuneration committees have access to the right information to make informed decisions;
3. by having appropriate arrangements in place to manage conflicts of interest; and

4. by clearly communicating (both internally and externally) the rationale for decisions on executive variable pay outcomes.

'Active, timely and consistent exercise of discretion'

Suggested steps to help boards ensure that they are exercising their discretion on variable pay in the best interests of the company

Noting that discretion on variable pay outcomes is likely to be a key focus for boards in 2020, given targets will have been set prior to the COVID-19 pandemic, ASIC suggests that boards might consider implementing the following to ensure they exercise their discretion in the best interests of the company.

- Implement practices to prompt the use of discretion in the company's variable pay scheme: ASIC suggests that this might include providing the board with 'targeted information' to determine whether to exercise discretion at a relevant point in the variable pay scheme. ASIC suggests that it might be helpful for boards to be provided with past examples of circumstances where discretion has been exercised to aid and build consistency in approach. ASIC also suggests that additional information could be provided at other points in the company's variable pay scheme, such as when decisions can be made to apply overall modifiers (eg a risk modifier) and behavioural gateways.
- Implement practices/frameworks to guide the exercise of discretion before variable pay decisions are made: ASIC suggests that this could include scenario planning around the circumstances in which discretion could be exercised (prior to any decision being made) and the use of decision trees to help guide the circumstance in which the board might opt to exercise discretion and how it will do so (quantum of adjustment).

Access to the right information to make an informed decision

To 'ensure that the exercise of discretion is sufficiently objective and informed' ASIC says that it's important that remuneration committees consider the type of information they need to make an informed decision, and the source/sources of that information.

- **'Broader information' on company performance/stakeholder impact should be considered:** In the current context, ASIC writes that boards will need to make sure that they understand how COVID-19 has impacted performance measures that were put in place before the pandemic. ASIC suggests that for balanced scorecard outcomes, this could include consideration of 'broader information on corporate performance and impacts on stakeholders (such as customers, investors or employees) – to balance' the outcomes of the scorecard.
- **Management should not be the only source of information:** ASIC observes that though management is likely to be a 'primary source of relevant information', boards should consider supplementing this with information drawn from control functions within the company (eg finance, risk, compliance, internal audit and human resources) as well as with information from independent third party advisers or other external information sources. In addition, ASIC suggests that boards and remuneration can also leverage insights on the company's overall performance as well as an individual's performance from other board committees. In making this suggestion, ASIC observes that for the purposes of facilitating information sharing across committees, relying on cross-committee membership alone is not as effective as having processes in place to 'harness information flows'. ASIC makes two suggestions as to how this could be done: 1) ASIC suggests holding joint committee meetings either regularly during the year or to coincide with the timing of variable pay decisions; and 2) setting aside time on the remuneration committee agenda to hear contributions from cross-committee members and/or with documented input tabled at the meeting from other committees, with minutes recording their contribution.
- **Format/delivery of information to the board:** ASIC says that boards should consider the best way for information to be delivered to 'enhance the quality of their decision making'. ASIC suggests that receiving written material before a meeting could provide committee members both with the opportunity for broader reflection and provide context for a board discussion and that having a member from a control function present at a meeting could provide directors with an opportunity to probe the information further.

Managing conflicts of interest

- **Executive involvement:** ASIC says that though it's often 'unavoidable' for executives to have involvement in decisions on their own variable pay eg involvement in compiling key information to be presented to the board, ASIC considers it essential that appropriate processes are in place to manage and where possible, avoid, conflicts of interest. In this scenario, ASIC suggests that executives should not take part in or be present for the decision making process, but leave the meeting following their presentation. In addition, ASIC suggests that

information provided by relevant executives should be supplemented with insights from other independent sources.

- **CEO involvement:** On the issue of CEO pay, ASIC suggests that 'if current circumstances make significant input of the CEO into recommendations on variable pay unavoidable, boards should consider introducing mechanisms that separate the outcome of the CEO's award from the award of other executives'. This might mean, ASIC suggests, separating the decision on the outcome of CEO variable pay from decisions on executive variable pay more broadly. 'If the CEO is responsible for making recommendations on the size of the bonus pool for executives, a separate funding pool uninfluenced by the CEO's recommendation could be created for the CEO' ASIC suggests.
- **Remuneration committees should ensure they have the information they need, and the time required to reach a decision:** ASIC emphasises the importance of ensuring that remuneration committees have both sufficient information and sufficient time to consider, scrutinise and debate outcomes in the current environment. ASIC suggests that this 'would likely include' scheduling at least one 'substantive preliminary meeting' for the purposes of ensuring that the committee has all necessary information about the company's and the individual's circumstances and performance before making a final pay decision.

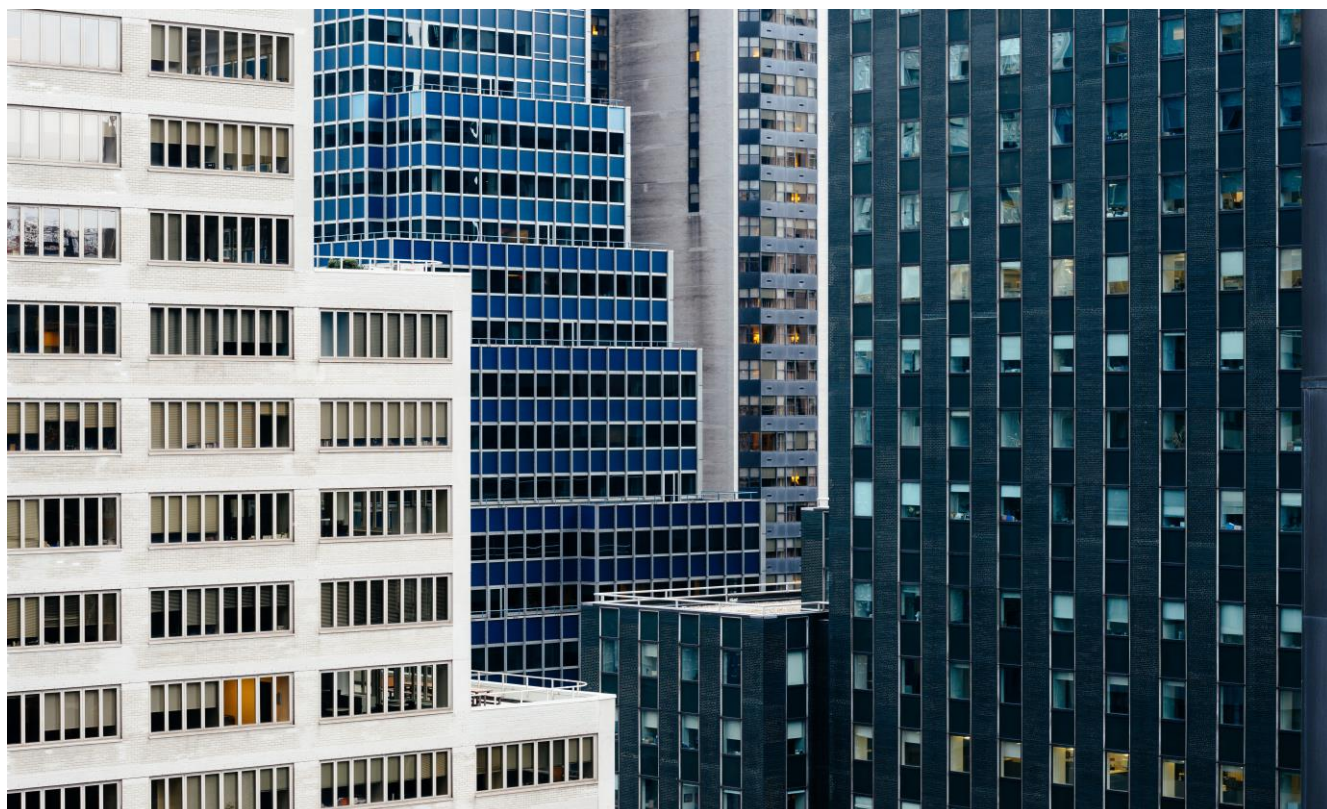
Clearly communicating the rationale for board decisions on executive variable pay outcomes

ASIC considers that clear communication about why decisions on executive variable pay were made to be essential both to ensure both internal 'buy in' and to maintain investor confidence.

ASIC suggests that board communication could be enhanced by:

- ensuring remuneration reports include the rationale for the exercise of discretion, or the reasons why discretion was not exercised in final pay outcomes;
- outlining the governance processes and principles adopted in making the executive variable pay decisions;
- explaining how the company's specific circumstances (including the impact of COVID-19) were taken into account in the decision making process and how this is consistent with the principles adopted
- ensuring that committee minutes contain an accurate record of the key points of discussion 'and reasons as to how and why an executive's variable pay outcome was determined'.

[Sources: ASIC media release 12/06/2020; ASIC Information Sheet 245 Board oversight of executive variable pay decisions during the COVID-19]



Regulators

COVID-19: ASIC has released an interim corporate plan and revised indicative timeline for the release of key guidance and consultations in the period through to Q2 2020

Key Takeouts

- The revised timeline for the release of key guidance and consultations provides indicative timing of the release of guidance/consultations in relation to a number of Hayne recommendations.
- The Interim Corporate Plan 2020/21 sets out ASIC's five priorities to address the challenges presented by the COVID-19 pandemic and gives examples of focus areas for the regulator under each. ASIC's priorities are: 1) protecting consumers from harm at a time of heightened vulnerability; 2) maintaining financial system resilience and stability; 3) supporting businesses to respond to the effects of COVID-19; 4) continuing to identify, disrupt and take enforcement action against the most harmful conduct; and 5) continuing to build ASIC's organisational capacity:

The Australian Securities and Investments Commission (ASIC) has released an 'Interim Corporate Plan' for 2020/2021 reflecting the regulator's updated priorities in light of the pandemic and separately an updated timeline for the release of key consultations and guidance in the period through to Q2 2021.

Announcing the release of the interim corporate plan and timeline, ASIC Chair James Shipton emphasised that the shift in priorities/delay of some work is not an 'abrogation' of the regulator's enforcement work which is continuing.

Mr Shipton said,

'...it is important to note that the fact that some work has been delayed longer than would otherwise be desirable is not an abrogation of our regulatory work, but a recognition that some existing activities and new tasks must take precedence over work we would otherwise be doing. Indeed, a number of important enforcement outcomes have been achieved in the past two months, as the courts have continued to hear matters and deliver judgments.'

Revised timeline for the release of regulatory guidance and consultations

The table below sets out an 'indicative' timeline for the release of ASIC regulatory guidance and consultations in the period through to Q2 2020, including the release of guidance on the implementation of Hayne Commission recommendations.

[Note: You can find ASIC's detailed revised timeline for ongoing work on the ASIC website [here](#).]

CONSULTATION/REGULATORY GUIDANCE	INDICATIVE RELEASE DATE
Information sheet: Board oversight of executive variable pay decisions during the COVID-19 pandemic	June 2020 Note: On 12 June, ASIC released Information Sheet 245: Board oversight of executive variable pay decisions during the COVID-19 pandemic (INFO 245) . A high level summary is included in a separate post in this issue of Governance News.
Regulatory Guide: Product Intervention Power	June 2020
Regulatory Guide: Mortgage Broker best interests duty	June/July 2020

CONSULTATION/REGULATORY GUIDANCE	INDICATIVE RELEASE DATE
(Response to Hayne Recommendation 1.2 Mortgage broker best interests duty)	
Updated Regulatory Guide: New RG 271 Internal Dispute Resolution (outlining updated IDR standards/requirements)	July 2020 New requirements to commence 5 October 2021
Industry Survey: Competition in the Investment Management Industry	July/August 2020 (input into the survey extended to the end of July, delivery of an interim report on the findings delayed until the end of August 2020).
Regulatory Guide: Product Design and Distribution Obligations	Q3 2020
<p>Consultation: Remediation policy</p> <p>ASIC will consult on a proposal to extend the application of the remediation policy in Regulatory Guide 256 Client review and remediation conducted by advice licensees (RG 256) beyond financial advice.</p>	Q3 2020
Consultation: Phase 2 of consultation on IDR data collection and reporting.	Q3 2020
Report: Release review into Buy Now Pay Later (BNPL) products and regulation of BNPL sector	Q3 2020
<p>Legislative instrument: Commencement of changes to fees and costs disclosure requirements for managed funds and superannuation in Regulatory Guide 97 Disclosing fees and costs in PDSs and periodic statements.</p> <p>ASIC will amend the transitional arrangements for Product Disclosure Statements to allow entities to come into the new disclosure regime from 30 September 2020 and require any PDS given on or after 30 September 2022 to comply with the new disclosure regime.</p>	September 2020
<p>Consultation: Miscellaneous market integrity rule amendments – securities and futures markets.</p> <p>ASIC says it is 'exploring options to reduce the 2020 accreditation burden for market intermediaries and their derivative advisers'.</p> <p>ASIC will review automated order processing controls for futures market participants where there are risks to the resilience of the market.</p>	September 2020
<p>Consultation on new information sheet: removal of the claims handling exemption (ASIC says that the information sheet may include how to apply for an Australian financial services licence and compliance with licence obligations)</p> <p>(Response to Hayne recommendation 4.8 Removal of claims handling exemption).</p>	September 2020 (subject to the legislation being introduced into parliament).

CONSULTATION/REGULATORY GUIDANCE	INDICATIVE RELEASE DATE
Consultation: ePayments Code	Q4 2020
<p>Consultation on a draft legislative instrument and information sheet on a reference checking protocol for mortgage brokers and financial advisers, and updates to Regulatory Guide 104 Licensing: Meeting the general obligations and Regulatory Guide 205 Applying for and varying a credit licence.</p> <p>(Response to Hayne Recommendations 1.6 Misconduct by mortgage brokers and 2.7 Reference checking and information sharing)</p>	October 2020 (subject the legislation being introduced into parliament).
Report: Review into insurance in superannuation (industry's progress on improving insurance outcomes for consumers)	December 2020
<p>Consultation on changes to Regulatory Guide 38 The hawking prohibitions to expand the hawking prohibition to superannuation and insurance products.</p> <p>Consultation on an information sheet about the deterred sales model for add-on insurance.</p> <p>(Response to Hayne Recommendations 3.4 No hawking in superannuation, 4.1 No hawking of insurance and 4.3 Deferred sales model for add-on insurance)</p>	December 2020
Regulatory guidance (updated Regulatory Guide 245 Fee disclosure statements) and legislative instrument to implement Hayne Recommendations: 2.1 Annual renewal and payment; 2.2 Disclosure of lack of independence; 3.2 No deducting of advice fees from MySuper accounts; and 3.3 Limitations on deducting advice fees from choice accounts.	December 2020 (subject to the timing of introduction of the Bill into Parliament)
<p>Consultation: proposed update to Regulatory Guide 78 Breach reporting by AFS licensees and on a new information sheet about new requirements for financial advisers and mortgage brokers to investigate misconduct and notify and remediate affected clients.</p> <p>(Response to Hayne Recommendations 1.6 Misconduct by mortgage brokers, 2.8 Reporting compliance concerns, 2.9 Misconduct by financial advisers, 7.2 Implementation of Enforcement Review Taskforce recommendations)</p>	February 2021 (subject to the timing of introduction of the Bill into Parliament)
<p>Regulatory guidance: Enforceable Code provisions (draft update to Regulatory Guide 183 Approval of financial services sector codes of conduct).</p> <p>Note: ASIC says it intends to also 'undertake targeted consultation at an earlier stage' (timing not specified).</p> <p>(Response to Hayne Recommendation 1.15 Enforceable code provisions)</p>	Q2 2021 (subject to the passage of the necessary legislation through the parliament before this date).

Updated priorities: Interim Corporate Plan 2020/21

The [interim plan](#) sets out ASIC's five priorities to address the challenges presented by the COVID-19 pandemic.

1. **Protecting consumers from harm at a time of heightened vulnerability:** Areas of focus for ASIC include (among others): a) taking action against false and misleading advertising; b) taking action against predatory lending; c) 'disrupting' the mis-selling of harmful products and the provision of poor advice to consumers affected by pandemic-related investment losses/hardship; d) taking action against scams; d) taking action to help ensure firms offer appropriate support and services to consumers (eg that hardship assistance is provided fairly and insurance claims are processed efficiently and in utmost good faith); e) engaging with industry stakeholders to ensure fair business standards are maintained; f) providing consumers with information to help them manage their finances through the pandemic; g) taking action to ensure that entities give accurate information to consumers (eg in the context of the early access to superannuation scheme); and h) working with superannuation trustees, advisors and other stakeholders to minimise member harms and inappropriate advice.
2. **Maintaining financial system resilience and stability:** Areas of focus for ASIC include (among others): a) monitoring and taking action where misleading/false promotional statements are made to the market in relation to COVID-19 products; b) ensuring continuous disclosure obligations are being met/taking action where appropriate where they are not; c) continuing close and continuous monitoring work with Australia's largest financial institutions (though onsite supervisory work is deferred); d) monitoring changes in governance practices and providing guidance where appropriate to avoid adverse impacts on investors/other stakeholders; e) conducting 'enhanced monitoring' of market infrastructure providers and intermediaries to identify/intervene to address risks to the operational resilience (eg monitoring their cyber resilience); f) conducting 'enhanced monitoring' of clearing and settlement facilities' management, governance and mitigation of operational and financial risks; g) monitoring excessive trade counts and consulting where appropriate with industry on any regulatory changes; h) conducting enhanced monitoring of trading, capital raisings and company announcements to ensure 'integrity and orderliness'; i) monitoring short selling and securities lending volumes and taking action against misconduct/conduct leading to disorderly trading; j) reviewing short selling policy settings; and k) taking quick regulatory action including enforcement action against COVID-19 related misconduct.
3. **Supporting businesses to respond to the effects of COVID-19:** The plan outlines the relief measures implemented to support businesses to weather the pandemic and flags that the regulator will continue to 'monitor the COVID-19 pandemic and assess the need to provide further relief'. In the insolvency space, in light of the expected uptick in the number of corporate insolvencies, ASIC says that it is focused on providing guidance to registered liquidators. ASIC says that as the COVID-19 pandemic 'evolves' it will continue to put in place measures to assist businesses with a focus on: a) facilitating the timely completion of recapitalisations and other urgent transactions; b) ensuring the smooth and efficient operation of ASIC's business registers and associated services; c) utilising information gathering powers efficiently; d) identifying 'innovative solutions to maintain efficient and effective supervision of firms and markets despite the limitations imposed by the COVID-19 pandemic'; and e) supporting the government's response to the pandemic (eg through participation in the Council of Financial Regulators).
4. **Continuing to identify, disrupt and take enforcement action against the most harmful conduct:** ASIC's enforcement work on 'previously prioritised' enforcement actions continues, including work on matters currently before the courts, existing investigations that are time-critical and enforcement matters arising from the Hayne Commission. In addition to this work, ASIC's key areas of focus include: a) market misconduct (eg breaches of continuous disclosure requirements and insider trading); b) misconduct involving large market participants or entities; c) cases that engage ASIC's powers or provisions that carry new or higher penalties; d) misconduct that relates to superannuation and insurance; e) illegal phoenix activity; f) auditor misconduct; and g) new types of misconduct (eg those using emerging technologies). In addition, ASIC says that it continues to focus on ensuring that 'individual accountability is given appropriate attention in our investigations' (eg in relation to company directors and officers). ASIC is also continuing to work with financial firms to seek opportunities to accelerate the payment of remediation to consumers.
5. **Continuing to build ASIC's organisational capacity:** ASIC's internal focus includes: a) ensuring the internal culture at the regulator reflect ASIC's core values of accountability, professionalism and teamwork; b) putting in place effective remote working systems; c) supporting 'staff engagement, managing productivity and enhancing wellbeing and resilience' in a work from home environment; d) mobilising staff and resources in line with changing priorities; e) coordinating with domestic and international regulators to respond to crisis impacts as they develop; f) building longer term capacity (eg data, communications, and the 'responsiveness' of the organisations' and g) being informed by the lessons learnt from operating under COVID-19 restrictions.

ASIC Chair James Shipton said that the priorities enable ASIC to focus its work on the needs of consumers and firms as they respond to COVID-19.

[Sources: ASIC media release 11/06/2020; Interim Corporate Plan; Revised timetables of ongoing work]

ASIC has released its Cost Recovery Implementation Statement 2019-20 for feedback, the FPA has questioned the proposed 38% increase for financial planners

The Australian Securities and Investments Commission (ASIC) has released its draft Cost Recovery Implementation Statement (CRIS) 2019-20 for feedback.

The CRIS outlines ASIC's actual regulatory costs for 2018-19 and provides an estimate of costs for 2019-2020 to give industry an indication of what levy costs to expect (though this is indicative only). The CRIS is based on ASIC's planned regulatory work and budgeted allocation of costs at the beginning of the 2019-20 year and does not reflect ASIC's adjusted work program in response to the pandemic.

The deadline for feedback on the draft CRIS is 24 July 2020. ASIC says that in light of the disruption caused by COVID-19, ASIC has extended the feedback period to enable entities more time to provide comments.

Response

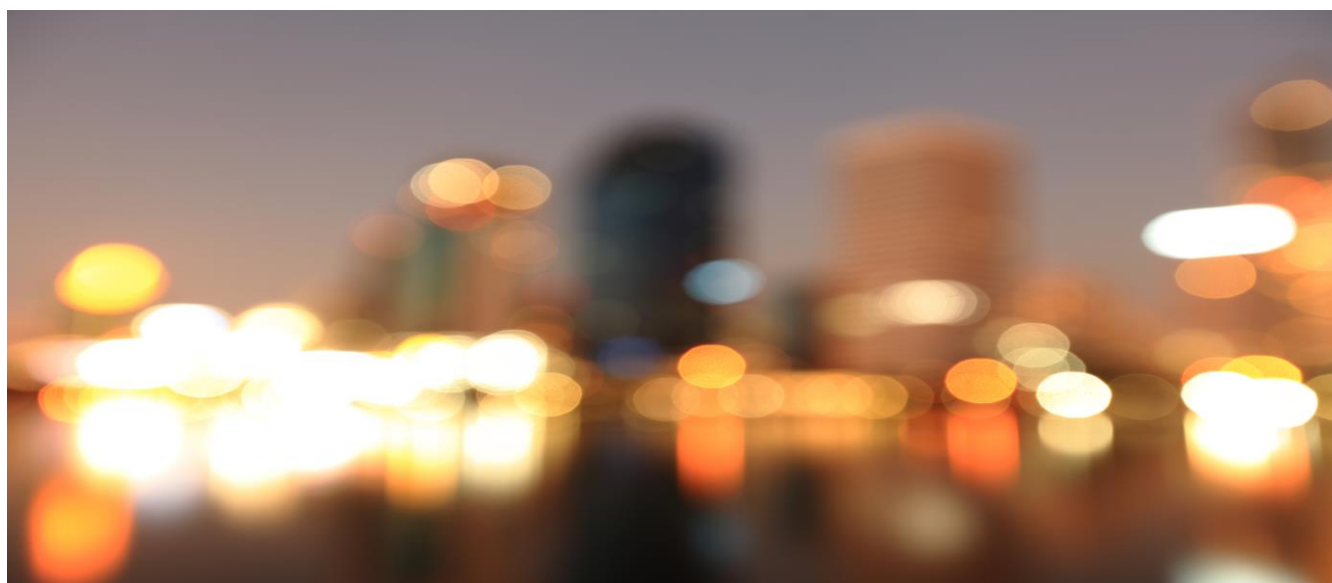
The Financial Planning Association of Australia (FPA) has issued a statement questioning whether a 38% increase for financial planners is appropriate in the current environment, and in light of the 22% increase already applied in 2017-18.

FPA CEO Dante de Gori said, 'Financial planners themselves are already under tremendous pressure to meet new education requirements, await critical outcomes on the FASEA extension from an unpredictable parliament and overhaul their business models to meet regulatory requirements. As small businesses, financial planning practices also face the challenges that COVID-19 has created for the wider SME sector. ASIC's fee hike does nothing to support them or their clients during this difficult time.'

[Sources: ASIC media release 11/06/2020; Interim Corporate Plan; Revised timetables of ongoing work]

In Brief | APRA funding Bills update: The package of seven Bills proposing to enable the Commonwealth to recover the costs of a wider range of APRA's activities from prudentially regulated entities, and to increase the statutory upper limit from \$1.5m to \$10m, has progressed to second reading stage in the Senate

[Sources: Australian Prudential Regulation Authority Amendment (APRA Industry Funding) Bill 2020; Authorised Deposit-taking Institutions Supervisory Levy Imposition Amendment Bill 2020; General Insurance Supervisory Levy Imposition Amendment Bill 2020; Life Insurance Supervisory Levy Imposition Amendment Bill 2020; Superannuation Supervisory Levy Imposition Amendment Bill 2020; Retirement Savings Account Providers Supervisory Levy Imposition Amendment Bill 2020; Authorised Non-operating Holding Companies Supervisory Levy Imposition Amendment Bill 2020]



Financial Services

COVID-19: ASIC puts Managed Investment Scheme 'on notice' to ensure advertising and disclosure is 'clear, balanced and accurate'

Key Takeouts

- ASIC conducted a review of 13 investment funds' marketing and disclosure and identified three key areas of concern: 1) use of 'unbalanced comparisons' between the fund and other lower risk products; 2) the promotion of funds as 'low risk' when this was not the case; and 3) giving the impression that it is easy to withdraw funds at short notice when this is not the case.
- ASIC says that it will continue to monitor the advertising and disclosure by managed funds during the COVID-19 pandemic and is 'considering enforcement action' against funds that are 'promoting (implicitly or expressly)' that their products are low risk or 'high yield' when this isn't the case.

Overview

The Australian Securities and Investments Commission (ASIC) has called on the responsible entities (REs) of management investment schemes (MISs) to ensure that their investment fund advertising 'provides clear, balanced and accurate information' following ASIC's surveillance of advertising material.

ASIC's review of advertising material, website disclosure and product disclosure statements from managed funds during the COVID-19 pandemic identified that some funds are providing 'inadequate information or were not accurately and clearly presenting key features of their investment products'.

ASIC highlights three examples of issues about which it is 'seriously concerned'. These are:

1. **comparing funds to other lower risk products (unbalanced comparisons):** the use of comparisons that focused on one aspect of a fund such as higher returns without also providing a 'fair and balanced indication' of the key differences or risks
2. **promoting the funds as low risk**, when this was not the case (ie despite the fund's underlying assets being 'subject to considerable risk and market volatility')
3. **giving the impression that is easy to withdraw funds on short notice** where this is not the case (ie the liquidity of the fund 'does not support this claim').

Funds have taken corrective action at ASIC's direction

ASIC Deputy Chair, Karen Chester said that following the review ASIC raised concerns with seven REs about their advertising and disclosure in relation to 13 investment funds and all seven REs have now taken corrective action.

The seven REs have: a) stopped advertising the funds and reviewed advertising content; b) stopped issuing interests in the funds until ASIC's concerns are addressed; c) withdrawn and replaced product disclosure statements; d) provided more balanced and prominent disclosure of investment risks and disclaimers; e) clarified actual withdrawal terms; and f) stopped comparing funds to other lower risk products.

ASIC has called on responsible entities to ensure advertising and disclosure is accurate, clear and 'true to label'

Ms Chester called on REs to ensure that their advertising and disclosure is accurate, clear and 'true to label' especially in the current environment.

Ms Chester said that

'Current market uncertainty and volatility brings a heightened imperative for REs to ensure consumers are not misled or misinformed. This is critical when it comes to the investment product's risk profile, returns and the fund's liquidity.

'It is now widely acknowledged that disclosure alone is not enough to protect consumer interests. But balanced and accurate product information, especially about associated risks, remains fundamental for consumers to have at least a shot at understanding what they are getting into'.

On this basis ASIC 'reminds REs' that they must to 'ensure their advertising and websites are not misleading or deceptive'. In particular, ASIC said that 'extreme care' should be taken when using any terms/phrases that might give the impression that a product is safe/that withdrawals will be available at short notice.

ASIC refers firms to the guidance in ASIC Regulatory Guide 234: Advertising financial products and services (including credit): Good practice guidance to assist in ensuring compliance with legal obligations not to make false or misleading statements or engage in misleading or deceptive conduct in this context.

Next steps

ASIC says that it will continue to monitor the advertising and disclosure by managed funds during the COVID-19 pandemic and is 'considering enforcement action' against funds that are 'promoting (implicitly or expressly)' that their products are low risk or 'high yield' when this isn't the case.

ASIC adds that it 'also recently warned' REs about ensuring that their products are 'true to label' and do not make unbalanced comparisons between managed funds and term deposits.

[Source: ASIC media release 15/06/2020]

COVID-19: So far funds have paid out \$14.8bn under the early release of superannuation scheme

The Australian Prudential Regulation Authority (APRA) has released industry-level and fund-level data on the temporary early release of superannuation scheme for applications received during the period 20 April (inception of the scheme) to 7 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 7 June, superannuation funds made payments to 167,000 worth \$1.3 billion to members.
- Since inception of the scheme, 2 million payments worth \$14.8 billion have been paid.
- The average payment made over the period since inception is \$7,475.

[Source: APRA media release 15/08/2020]

COVID-19: ASIC has registered an amending instrument to specify end dates for temporary capital raising and financial advice instruments

The Australian Securities and Investments Commission (ASIC) has registered an amending instrument - [ASIC Corporations \(Amendment\) Instrument 2020/565](#) – setting specific end dates for three COVID-19 related instruments.

Specific end dates – the temporary measures will be repealed six months after they commenced

- [ASIC Corporations \(Share and Interest Purchase Plans\) Instrument 2019/547](#) will be repealed on 2 October 2020
- [ASIC Corporations \(Trading Suspensions Relief\) Instrument 2020/289](#) will be repealed on 2 October 2020
- [ASIC Corporations \(COVID-19 – Advice-related Relief\) Instrument 2020/355](#) will be repealed on 15 October 2020

Further extension or earlier repeal is possible – ASIC is monitoring the situation

ASIC says that the purpose of the amendments is to 'notify stakeholders that might be seeking to rely on the legislative instruments of when these temporary measures will cease to operate'. Having said this, the explanatory statement accompanying [ASIC Corporations \(Amendment\) Instrument 2020/565](#) states that ASIC will continue to monitor the situation and may 'repeal the relief before the end of the six month period or extend the relief' as it considers appropriate. ASIC says that it will give 'sufficient notice' before any early repeal/extension is implemented.

[Sources: ASIC media release 12/06/2020; [ASIC Corporations \(Amendment\) Instrument 2020/565](#)]

Response – FPA concerned that it's too soon to specify an end-date

In a statement, the Financial Planning Association of Australia (FPA) raised concerns about the announcement for an end date on relief under ASIC Corporations (COVID-19 – Advice-related Relief) Instrument 2020/355 on the basis that doing so is premature.

FPA CEO Dante De Gori also said the industry was not consulted on the decision.

'These relief measures have made advice more affordable for Australians when they need it most by reducing costs among financial planning practices. ASIC had asked us to canvas members on their use of these relief measures and we are still in the process of compiling this feedback. It is too early to understand how long these measures will be needed and far too soon to be setting an end date, given that the feedback process is yet to be completed.' Mr De Gori said.

[Source: FPA media release 12/06/2020]

Raising the 'bar for professionalism within the financial services industry': All NAB and BNZ employees to complete a new professional qualification for bankers

The Financial Services Institute of Australasia (FINSIA) has announced an agreement with NAB and BNZ to provide a new, internationally recognised, professional banking qualification for all NAB and BNZ employees.

Announcing the initiative, FINSIA said that Australian financial regulators have supported its work in promoting professionalism in the sector over time, and emphasised that this initiative is part of that work..

FINSIA writes,

'Bringing trust levels in banking and financial services up to where they should be will happen when we are regarded as a profession, like accountants, lawyers, doctors and pilots. And when our people display pride in this profession and a commitment to continuously raising standards. The investment in professionalism in other jurisdictions such as the UK and Asia has resulted in higher levels of consumer trust and individual practitioner pride. Professional pride is an important driver of good conduct and skills improvement. Having professional status hones an individual's accountability when it comes to compliance and regulatory obligations'.

FINSIA says that in order to be effective, the initiative needs the broad support/participation of industry and welcomed the support of NAB and BNZ in being the first to roll it out to their employees.

The statement adds that FINSIA considers an 'aspirational-driven approach' to be preferable to a 'compliance enforced future'.

In a separate statement, NAB announced that all 34,000 NAB employees will complete the qualification to 'build their skills, capabilities and confidence, in order to best serve customers'.

NAB CEO Ross McEwan said that the new qualification will include 'the fundamentals of banking – getting the basics right which I've said from day one at NAB is so critical to serving our customers well – and the skills and expertise for supporting customers in good times and tough times, which will be needed in a post COVID-19 world.

Mr McEwan went on to say that the qualification will 'go above and beyond the industry standard and give NAB bankers and all support function colleagues formal qualifications to carry forward throughout their careers'.

Mr McEwan also emphasised that the aim of the new qualification is to both lift standards of professionalism within the lender, and within the industry. 'By lifting the quality of service we provide and setting clearer, more consistent expectations of conduct, NAB will raise the bar for professionalism within the financial services industry' Mr McEwan said.

NAB adds that Mr McEwan introduced a similar requirement in his previous role as CEO of the Royal Bank of Scotland which was successful in putting RBS into a 'market leading position to improve the professionalism of the financial services sector'.

[Sources: FINSIA media release 10/06/2020; NAB media release 10/06/2020; [registration required] The AFR 10/06/2020; The Australian 10/06/2020]

In Brief | FASEA Bill update: Treasury Laws Amendment (2019 Measures No 3) Bill 2019, the Bill which defers the transitional timeframes for existing financial advisers to comply with education and training requirements, has finally passed both Houses after the Senate did not insist again on Centre Alliance amendments

[Sources: Treasury Laws Amendment (2019 Measures No 3) Bill 2019]

In Brief | Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019 which would enable employees under workplace determinations or enterprise agreements to choose their superannuation fund, has progressed to second reading stage in the Senate

[Source: Treasury Laws Amendment (Your Superannuation, Your Choice) Bill 2019]



Risk Management

CLIMATE RISK

Fortescue Metals sets net-zero by 2040 emissions target

Fortescue Metals has set a target of net-zero operational emissions by 2040. The company has also set targets for reducing its Scope 1 and Scope 2 emissions by 20% from 2020 levels.

Announcing the targets, Fortescue Metals CEO Elizabeth Gaines said that the company 'supports the Paris Agreement long term goal of limiting global temperature rise to well below 2 degrees above pre-industrial levels and our emissions reduction targets align with this international objective.'

Ms Gaines added that the company continues to invest in new technologies to enable climate targets to be met 'with a sense of urgency'. In addition to the development of gas technology and renewables, Ms Gaines said that Fortescue is working towards decarbonising its mobile fleet through the next phase of hydrogen and battery electric energy solutions.

[Sources: Fortescue Metals media release 16/06/2020; [registration required] The Australian 16/06/2020]

COVID-19: bp expects the pandemic to 'accelerate the pace of transition to a lower carbon economy and energy system'

In a statement, bp has flagged that the company has been reviewing its portfolio and capital management plans in line with 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'.

As a result of this process the company has: a) lowered its long-term price assumptions and extended the period covered to 2050; and b) is reviewing whether it will develop some of its exploration of intangible assets.

bp says that this will result in non-cash impairment charges and write-offs in Q2, estimated to be in an aggregate range of \$13 billion to \$17.5 billion post-tax.

Announcing the changes, bp CEP Bernard Looney said, that he is confident that these decisions will ensure that the company remains competitive through the period of energy transition. Mr Looney said:

'In February we set out to become a net zero company by 2050 or sooner...Since then we have been in action, developing our strategy to become a more diversified, resilient and lower carbon company. As part of that process, we have been reviewing our price assumptions over a longer horizon. That work has been informed by the COVID-19 pandemic, which increasingly looks as if it will have an enduring economic impact. So, we have reset our price outlook to reflect that impact and the likelihood of greater efforts to "build back better" towards a Paris-consistent world. We are also reviewing our development plans. All that will result in a significant charge in our upcoming results, but I am confident that these difficult decisions – rooted in our net zero ambition and reaffirmed by the pandemic – will better enable us to compete through the energy transition.'

[Sources: bp media release 15/06/2020]

In Brief | Climate risk is a risk to actuarial quality: The Joint Forum on Actuarial Regulation has updated its Risk Perspective to include climate change for the first time. Climate Related Risk was identified 'as the top 'hotspot', potentially the 'defining risk of our times'

[Sources: JFAR updated risk perspective; FRC media release 11/06/2020]

In Brief | The AFR reports that ANZ Chief Economist Richard Yetsenga has called on government to take immediate action to address climate change on the basis that it poses a 'grave financial risk'

[Source: [registration required] The AFR 16/06/2020]

SUPPLY CHAIN

Committed to boycotting conflict gold: The Perth Mint has issued a statement welcoming the LBMA's proposed review of its responsible sourcing processes and confirming that it is 'confident in its adherence to the highest ethical standards'

Following reports in [The AFR](#) about alleged issues with Perth Mint's supply chain, the Mint has issued two separate statements: a) confirming its commitment to boycotting conflict gold and other minerals; b) announcing that the Mint has initiated an independent review of its audit process which will include a review of the Mint's arrangements with licensed counterparties (including 'Artisanal Small-scale Mining'; and c) welcomed London Bullion Market Association's (LBMA) proposed review of the Mint's responsible sourcing processes and practices.

The Mint states that '

'As one of the largest and most reputable global gold refiners, The Perth Mint is confident in its adherence to the highest ethical standards and spearheads the sector in improving transparency and compliance in the supply chain. The LBMA has confirmed in writing that to date, The Perth Mint has been fully compliant with its Responsible Sourcing Program.

As one of the few refiners accredited by all five of the world's major precious metals exchanges, being the LBMA, the New York Commodity Exchange, the Shanghai Gold Exchange, the Tokyo Commodity Exchange and the Dubai Multi Commodities Centre (DMCC), The Perth Mint is confident it complies with the requirements of the LBMA's Responsible Gold Guidance, the Organisation for Economic Cooperation and Development (OECD) Due Diligence Guidance Minerals, and the DMCC Responsible Gold Guidance and Responsible Business Alliance (formerly the EICC)'.

Perth Mint CEO Richard Hayes added that the Mint is 'vigilant in our assessments of companies from which we source gold and other metals for processing and are confident we fully comply with regulatory requirements and the responsible gold guidelines set out by the global gold industry's governing bodies. In addition to our own strict audit protocols, we also use the Heidelberg Institute's Conflict Barometer, a publication which monitors and tracks events and trends in global conflict developments and settlements across multiple countries to inform our assessments.'

LBMA review

In a short [statement](#), the LBMA said that it has 'invoked' its 11 step incident review process to ensure a thorough and fair review into the issue. The LBMA says that next steps could include no action or potential sanctions and confirms that the Mint is currently on the 'good delivery list'.

The LBMA says it is difficult to put a timeframe on the review given the number of stakeholders involved and calls on the Mint to actively engage in the review process.

WA Premier Mark McGowan has reportedly ordered a review

The AFR [reports](#) that WA Premier Mark McGowan has ordered a review, to be led by Perth Mint Chair Sam Walsh into how the Mint evaluates its suppliers, with a particular focus on how it evaluates supplier environmental, social and governance standards. The review is reportedly expected to make recommendations about whether existing processes need to be tightened.

[Sources: Perth Mint media releases 12/06/2020; 15/06/2020; [registration required] The AFR 11/06/2020; 15/06/2020; 15/06/2020; The SMH 12/06/2020; LBMA media release 12/06/2020]

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