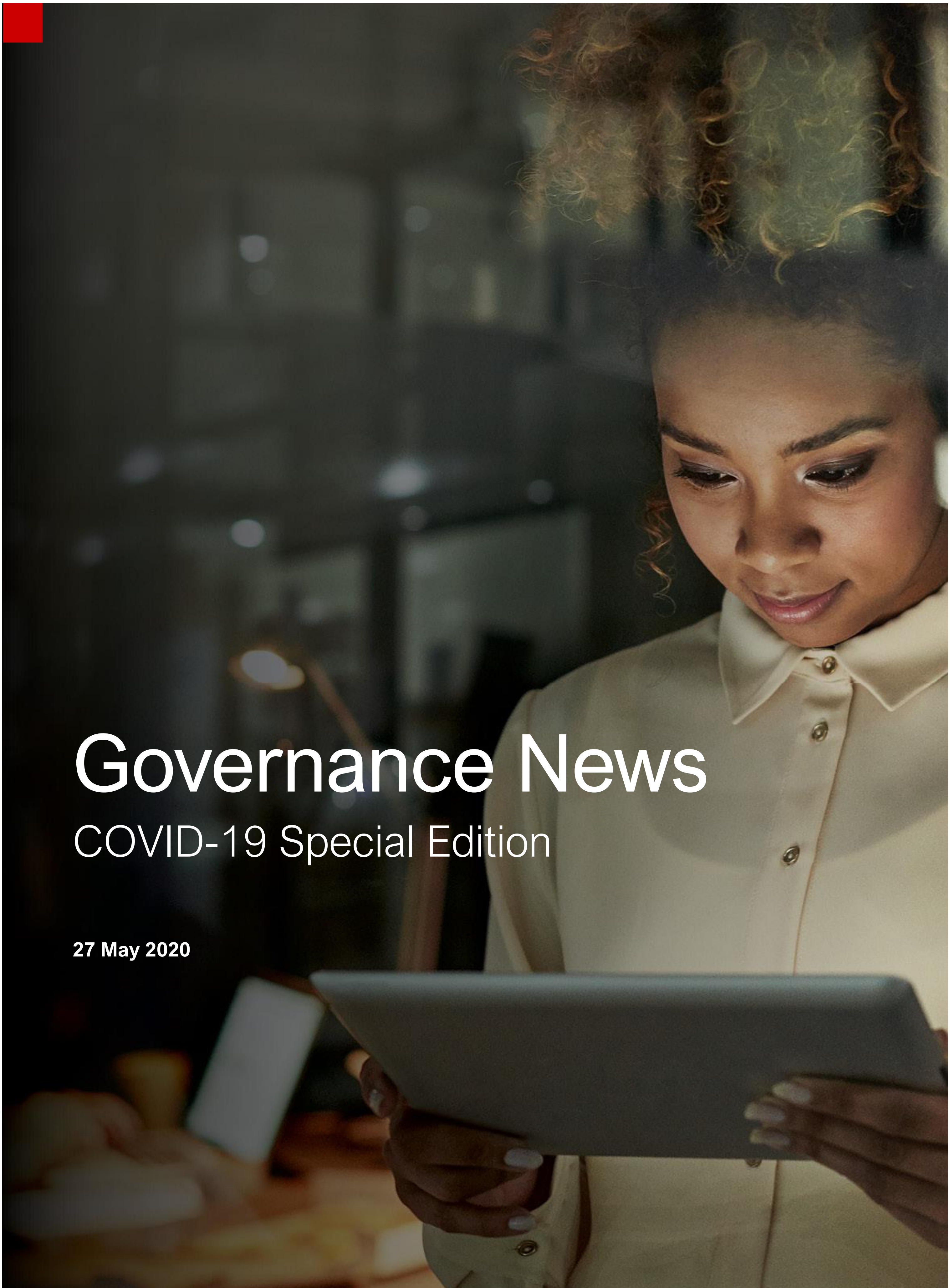


Governance News

COVID-19 Special Edition

27 May 2020

Contents

COVID-19 Key Developments

COVID -19: The cost of the government's JobSeeker scheme has been revised down to $70bn

In a joint statement, Treasury and the Australian Taxation Office (ATO) announced that the cost of the JobKeeper scheme has been revised down to an estimated $70 billion (from $130 billion) after it was found that the number of employees likely to access the program was not the estimated 6.5 million, but closer to 3.5 million.

The statement explains that error occurred for two reasons.

Reporting error: The first is that approximately 1000 employers incorrectly reported the number of employees likely to access the scheme on their enrolment forms.

> 'The most common error was that instead of reporting the number of employees they [employers] expected to be eligible, they reported the amount of assistance they expected to receive. For example, over 500 businesses with "1" eligible employee reported a figure of "1,500"(which is the amount of JobKeeper payment they would expect to receive for each fortnight for that employee).

Treasury forecasting: The second is that Treasury based its forecasting on the assumption that 6.5 million employees would access the program.

> 'At the time the JobKeeper program was developed, Treasury estimated that around 6.5 million employees would access the program. This estimate was developed at a time when Coronavirus cases were growing significantly in Australia and restrictions were being tightened across Australia and much of the world. The difference between Treasury's estimates at the time and the number of employees now accessing the JobKeeper program partly reflects the level and impact of health restrictions not having been as severe as expected and their imposition not having been maintained for as long as expected at the time. This has been reflected in some improvement to the outlook for the economy since the original estimate was developed as a consequence of these and other factors. The variation in estimates also reflects the inherent uncertainty associated with estimating the take-up of a demand driven program in the current circumstances'.

The statement makes clear that the impact of the error is limited because the 'only use of the information collected in respect of the reporting error was to provide an early estimate of the number of expected employees likely to access the JobKeeper program'. According to the statement, the error 'has no consequences' for payments that have already been made under the scheme and does not impact Treasury's 'view of the labour market'.

Calls to broaden the scheme

Federal Labor leader Anthony Albanese has called for the scheme to be broadened to include workers not currently eligible such as casual workers who have been in their roles less than 12 months (among others). Mr Albanese has also said that the error casts doubt on the credibility of the government's figures more generally and has pushed for Mr Frydenberg to appear before the Senate Select Committee to give evidence about how the error occurred.

The Treasurer has ruled out immediately widening the scheme on the basis that doing so would mean spending more than was required/taking on additional debt - there is 'no money tree' he said in an interview with ABC. The AFR reports that Mr Frydenberg has since said that there may be room to extend the scheme to provide specific additional support the tourism sector.

The Treasurer has said that there will be a review of the scheme and that depending on the results of the review, adjustments may be considered at that time.

> [Sources: Treasurer Josh Frydenberg Interview with Patricia Karvelas, ABC TV 22/05/2020; Federal Labor Leader Anthony Albanese, transcript of interview 22/05/2020; [registration required] The Australian 26/05/2020; Joint Treasury ATO media release 22/05/2020; The Conversation 22/05/2020; 24/05/2020; [registration required] The AFR 24/05/2020; 25/05/2020]

COVID-19: 'JobMaker' plan announced: The Prime Minister outlines the COVID-19 recovery plan

In his address to the National Press Club on 26 May, Prime Minister Scott Morrison spoke about the effectiveness of the government's response to COVID-19 so far and the path to recovery.

Some Key Points

- Current support measures are temporary: Mr Morrison said that current government support which is anticipated will cost in excess of $150bn over six months 'all borrowed, all of it, against future tax revenue' must 'only be temporary'. He added, 'At some point you've got to get your economy out of ICU. You've got to get it off the medication before it becomes too accustomed to it. We must enable our businesses to earn Australia's way out of this crisis. And that means focussing on the things that can make their businesses go faster'.
- Economic outlook is stark: Mr Morrison said that the backdrop to the October budget will be 'one of the starkest our country has seen. The most challenging domestic and global economic environment we have faced outside of wartime'. However, he emphasised that the problem 'is not the economy' but the impact of the pandemic and as such, though challenging, is (he considers) achievable.
- Reopening the economy will be more difficult than closing it down Mr Morrison said, and must be followed by a 'concerted effort to create momentum and to rebuild confidence'. The recovery may take three to five years.
- Key priority in the recovery is job creation: Mr Morrison introduced the 'JobMaker plan'.
  - Mr Morrison said that the plan will focus on: 'Skills, industrial relations, energy and resources, higher education, research and science, open banking, the digital economy, trade, manufacturing, infrastructure and regional development, deregulation and federation reform, a tax system to support jobs and investment'.
  - The plan is underpinned by the following five principles: 1) Australia 'will not retreat into the downward spiral of protectionism' but remain outward looking; 2) the government will 'live within their means' and not 'impose impossible debt burdens on future generations'; 3) the plan will 'leverage' and build on our already educated and highly skilled workforce to support 'not just a thriving and innovative services sector, but a modern, competitive and advanced manufacturing sector' and agricultural sector; 4) implementing 'policies that seek not to punish those who have success, but devise ways for others to achieve it'; and 5) focus on doing 'what makes the boat go faster' (prioritise supporting business in order to accelerate economic recovery).
  - Mr Morrison then provided some detail on planned skills and industrial relations changes, saying that more detail would be provided on these and other areas in the lead up to the budget in October.
- Skills sector reform (VET reform): Mr Morrison said that the current Vocational Education and Training (VET) regime needs to change. He flagged that planned changes will include: a) ensuring there are clearer links between funding and skills needs (based on industry requirements); b) simplifying the existing VET system, 'reducing distortions and achieving greater consistency' (including in pricing of courses) between jurisdictions, and between VET and universities; c) increasing transparency around funding and performance monitoring; and d) ensuring VET support (subsidies, loans and other sources of funding) is targeted at 'where it needs to go'. Mr Morrison said that the national hospital agreement provides 'a good model for the changes that I would like to advance'.
- Industrial relations reform: Mr Morrison said that the current industrial relations system is 'not fit-for-purpose, especially given the scale of the jobs challenge that we now face as a nation' and needs to change. He added that 'policy priorities for recovery will be different to those in place before this crisis'.
  - As a starting point, Minister for Industrial Relations, the Attorney-General, Christian Porter will 'lead a new, time-bound, dedicated process bringing employers, industry groups, employee representatives and government to the table to chart a practical reform agenda, a job making agenda, for Australia's industrial relations system'.
  - This will involve convening five working groups to work towards agreement on: 1) award simplification; 2) enterprise agreement making; 3) casuals and fixed term employees; 4) compliance and enforcement (to ensure workers are 'paid properly' and that unions 'do the right thing'; and 5) 'greenfields agreements for new enterprises'.
  - Each working group will include employer and union representatives and individuals chosen on their 'demonstrated experience and expertise and that will include especially small businesses, rural and regional backgrounds, multicultural communities, women and families'.
  - The process is expected to be completed by September.

- **The government will not pursue a further vote in the Senate on its Ensuring Integrity Bill**, to 'maximise the opportunity for a genuine course of negotiation, and compromise and cooperation that is vital to create jobs and chart an economic path back to what is mutually beneficial prosperity' Mr Morrison said. He added that this 'does not reflect any change or lack of commitment to the principle that lawful behaviour of registered organisations should be strictly required on all work sites in Australia'.

  [Note: The Bill referred to appears to be the Fair Work (Registered Organisations) Amendment (Ensuring Integrity No 2) Bill 2019 which proposed to implement recommendations 36-38 of the Final Report of the Royal Commission into Trade Union Governance and Corruption by strengthening the existing regulatory framework applying to trade unions.]

[Source: Transcript: Prime Minister Scott Morrison Speech to the National Press Club 26/05/2020]

COVID-19: UK government makes COVID-19 relief for large businesses conditional on their agreeing to 'exercise restraint on senior pay'

The UK government has expanded the Coronavirus Large Business Interruption Loan Scheme (CLBILS) to enable business to access larger loans. From 26 May, the maximum loan size will be increased £200 million (up from £50 million).

Loans will be conditional on borrowers agreeing not to pay dividends and to 'exercise restraint on senior pay'

Some Key Points

Under the CLBILS, borrowers will be able to borrow up to 25% of turnover, up to a maximum of £200 million subject to borrowers meeting certain conditions. These include borrowers agreeing not to:

- make any dividend payments (other than those that have already been declared)
- make any share buybacks
- pay any cash bonuses, or award pay rises to senior executives (including the board) except where they were: a) declared prior to the loan being taken out; b) are 'in keeping with similar payments made in the preceding 12 months'; and c) where doing so would not have a 'material negative impact on the borrowers' ability to repay the loan'.

Announcing the changes Economic Secretary to the Treasury John Glen said:

> 'We're determined to support businesses of all sizes throughout this crisis and our loans and guarantees have already provided over £32 billion to thousands of firms…Companies borrowing more than £50 million through CLBILS will be subject to restrictions on dividend payments, senior pay and share buy-backs during the period of the loan, including a ban on dividend payments and cash bonuses, except where they were previously agreed. These restrictions will also apply to CCFF participants that wish to borrow money beyond 12 months from today.'

[Sources: UK Treasury media release 19/05/2020; The Guardian 20/05/2020]

COVID-19: 155 business leaders have signed a statement calling on governments globally to commit to putting the transition to a low carbon economy at the centre of COVID-19 recovery plans

The Science Based Target Initiatives (SBTi) has released a statement, signed by 155 CEOs with a combined market capitalisation of over US$ 2.4 trillion and representing over 5 million employees, calling on governments globally to put the transition to a low-carbon economy, at the centre of their COVID-19 recovery plans.

The group asks that governments take the opportunity when designing recovery plans to 'reimagine a better future grounded in bold climate action' by matching the groups' collective commitments to:

- set 'ambitious science-based targets' in line with keeping warming to no more than 1.5°C
- invest in 'recovery and resilience for a systemic socio-economic transformation' (eg divesting from fossil fuels and investing in new low carbon alternatives); and
- working with governments to 'scale up the movement' through advocating for policies aligned with a 1.5°C trajectory and zero carbon economy.

'We look to policymakers to give businesses the confidence and clarity they need to take ambitious climate action' the group states.

[Sources: SBTi blog post; SBTi media release 19/05/2020; Statement and Signatories]

COVID-19 has underlined the importance of transitioning to a more sustainable economic footing? WEF CEO Action Group commits to advocate for, and support the implementation of, the European Green Deal

The World Economic Forum (WEF) has announced the establishment of the CEO Action Group for the European Green Deal (ie the EU's sustainable growth strategy for transitioning to a low-carbon economy) including: committing to net zero emissions of greenhouse gases by 2050 and 'decoupling' economic growth from resource use.

Supported by WEF, the group is intended to serve as a platform for business leaders to support the implementation of the Green Deal, promote sustainable practices within and outside their own companies and industries and to drive private sector investment in the transition to a low-carbon economy.

Announcing the establishment of the group, WEF writes that 'The outbreak of COVID-19 and the current crisis-management across Europe has highlighted the need to create more resilient and sustainable societies…Achieving this transformative agenda [envisioned by the European Green Deal] cannot be done by policymakers and institutions alone; it requires strong collaboration between representatives from governments, industry and the business sector.'

[Source: WEF media release May 2020]

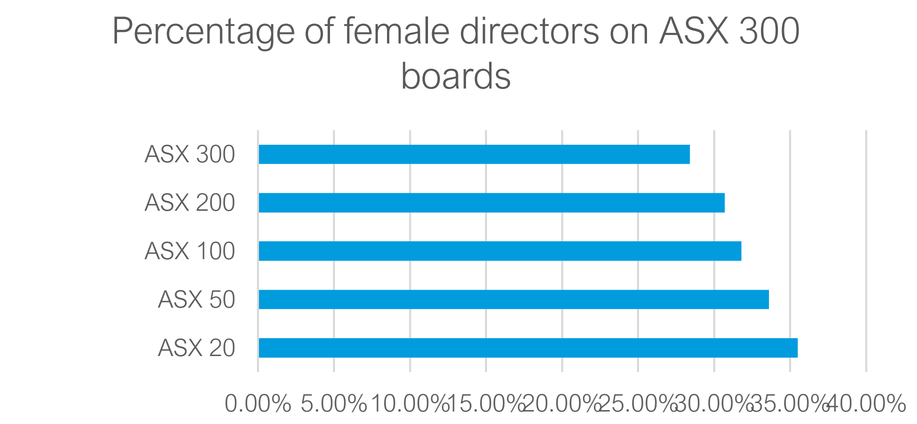
In Brief | Most businesses think the implementation of WFH because of COVID-19 has negatively impacted productivity? A joint Australia-ASEAN Chamber of Commerce report ranks loss of productivity (59% of businesses said WFH arrangements have had a negative impact on productivity and only 8% reported productivity improvements) as one of the three top impacts of the pandemic

[Source: Australian Business in ASEAN Survey 2020]

Diversity

COVID-19: No time to deprioritise diversity? The AICD's latest progress report on board (gender) diversity has found that there has been no improvement since January

The Australian Institute of Company Directors (AICD) has released a progress update on board (gender) diversity on ASX 200 and ASX 300 companies. The table shows the proportion of board seats held by women as at 30 April.



	ASX 20	ASX 50	ASX 100	ASX 200	ASX 300
■ Percentage of female directors	35.50%	33.60%	31.80%	30.70%	28.40%

Overall, the AICD found that larger companies are leading the way on board (gender) diversity with women accounting for 35.5% of board seats. In contrast, the proportion drops to 30.7% on ASX 200 boards.

There were four ASX 200 companies with all male boards and 34 companies with only one female board member.

The AICD is also tracking the progress of ASX 300 boards towards meeting the 30% female board representation target by the end of 2021. As at 30 April, the AICD found that the proportion of female directors is sitting at 28.4%.

No progress since January

Announcing the findings, AICD CEO and Managing Director, Angus Armour said that though the results are positive, it's important that boards don't lose sight of the value/benefits of diversity, especially in the present circumstances. Mr Armour said,

> 'While it's encouraging to see that the figure has held steady against the backdrop of COVID-19, there has been no progress since January. Critically, female directors only represent 34% of new appointments to the ASX 200 this year. As we move from a period of turbulence into one of recovery and rebuilding, companies should reflect on the skills required to drive innovation and growth. Board diversity is an important consideration in this discussion'.

In his foreword to the report, Mr Armour said that it is the AICD's hope that 'Australia's leading businesses continue to pave the way towards a 40:40:20 gender balance in their leadership'.

In a similar vein, 30% Club Australia Chair, Nicola Wakefield Evans emphasised the need for boards to prioritise gender diversity. Ms Wakefield said,

> 'While global efforts to pursue gender equality may have stalled as governments and the corporate sector focus on immediate responses to the crisis, it is vital that companies now re-engage in conversations about gender equality and maintain the momentum. The statistics also reveal that less than half of the ASX 200 have met the minimum target of 30% female directors. It is time for these companies to actively consider focussing on the diversity of their boards.'

> [Note: The Governance Institute's 2020 Board Diversity Index which tracks progress towards board diversity in the broad sense on ASX 300 boards also called on boards not to let diversity slip from the list of priorities because of the COVID-19 pandemic, arguing instead that the COVID-19 pandemic only underlines the value of diversity eg in the context of decision making. The full text of the Governance Institute's report is here. For a summary of the report see: Governance News 20/05/2020.]

[Sources: AICD media release 26/05/2020; AICD report: Gender diversity progress report February 2020 to April 2020; [registration required] The AFR 25/05/2020]

ECB sets gender diversity targets to increase female staff numbers at all levels within the organisation to between 40% and 51 % by 2026

The European Central Bank (ECB) has set new gender targets to increase the number of female staff hired and promoted at all levels within the organisation.

- The targets aim to increase the share of women at different levels within the organisation to between 40% and 51 % by 2026.
- The ECB will publish interim assessments in 2022 and 2024.
- Staff members who do not wish to declare themselves as either female or male will not be included in the statistics.
- The targets are accompanied by a set of other measures to support gender diversity.

Announcing the new approach, ECB President Christine Lagarde said 'We want gender balance to be the norm now

rather than a revolution to fight later. Let us not forget that gender is one of the many dimensions of diversity that we must all value. We should mirror the society we serve.'

[Source: ECB media release 14/05/2020]

Institutional Investors and Stewardship

COVID-19: 'No free pass' for companies on ESG issues during the pandemic says LAPFF

The Local Authority Pension Fund Forum (LAPFF) – a UK based voluntary association of 82 public sector pension funds with combined assets of approximately £300 billion – has released a statement cautioning companies that it 'will demand the highest standards of corporate governance from company boards as they tackle the fallout from COVID-19'.

In particular, the statement underlines the importance of companies ensuring that strong health and safety standards are in place and focusing on maintaining strong relationships between management and employees during the pandemic and the recovery period. 'When the workforce is being asked to make sacrifices at greater risks, never have high health and safety standards and strong relationships between management and employees been so important. These issues have taken on a new urgency in the crisis and all lie at the centre of the Forum's engagement work' LAPFF states.

LAPFF Chair Cllr Doug McMurdo commented,

> 'Responsible investors always need to be sensitive to the varied and variable operating markets that companies inhabit. However, this does not mean giving companies a free pass in hard times, which would be self-defeating. It is time now to double down to protect sustainable business practices and long-term shareholder returns in the downturn and lay the foundations for their growth in the recovery.'
>
> [Source: LAPFF media release 21/05/2020]

Shareholder Activism

COVID-19: Temporary short selling bans have been lifted in Austria, Belgium, France, Greece and Spain

On 18 May, EU securities markets regulator, The European Securities and Markets Authority (ESMA), announced that temporary bans on short selling (and similar transactions) have been lifted in Austria, Belgium, France, Greece and Spain by the relevant national authorities.

The temporary ban was implemented to help stabilise markets during the COVID-19 and had been in place since the 16 March.

In a statement, the World Federation of Exchanges (WFE) welcomed the decision to lift the bans.

WEF CEO Nandini Sukumar said,

> 'It is industry experience that short selling bans do not have a positive effect on market activity or price levels. Banning short-selling interferes with price formation, thereby increasing uncertainty. That can only artificially amplify volatility and probability of default, the opposite effect to that claimed and hampers the ability of markets to serve the real economy. We welcome the decision to allow regulated markets, that have demonstrated they are resilient and capable of operating as they should in a crisis, to now resume normal operation. We look forward to supporting Europe's measures to rebuild the economy.'

[Source: ESMA media release 18/05/2020; WFE media release 18/05/2020; [registration quired] The WSJ 18/05/2020; Minerva Analytics blog 20/05/2020]

In Brief | A group of 12 academics have petitioned the US Securities and Exchange Commission (SEC) to tighten the current regulatory framework (including disclosure requirements) to address the issue of 'manipulative short selling'

[Source: Oxford Law School blog 20/05/2020]

As You Sow has welcomed the level of investor support for the climate resolution at the JP Morgan AGM

Context: A shareholder resolution, coordinated by As you Sow, called on JPMorgan Chase to issue a report 'outlining if and how it intends to reduce the GHG emissions associated with its lending activities in alignment with the Paris Agreement's goal of maintaining global temperature rise below 1.5 degrees Celsius'.

Meeting result: The resolution failed to carry at the recent meeting (as it received less than 50% of the votes required). According to As You Sow, 49.6% of shareholders voted in support of the resolution.

In a statement, As You Sow commented that the result sends 'a strong message of concern to JPMorgan Chase about its outsize support of fossil fuels in the face of catastrophic climate risk'.

The statement goes on to comment that JP Morgan's stance is out of step with climate commitments by other US and European lenders. In the case of Wells Fargo, Morgan Stanley, Bank of America, and Goldman Sachs As You Sow withdrew similar resolutions following commitments by the lenders to specific actions.

[Source: As You Sow press release 19/05/2020]

Disclosure and Reporting

Top Story | COVID-19: Directors to be temporarily insulated from 'opportunistic class actions'

Key Takeouts

- Corporations (Coronavirus Economic Response) Determination (No 2) 2020 temporarily relaxes continuous disclosure obligations under the Corporations Act 2001 (Cth) (the Act), to enable companies and their officers to 'more confidently provide guidance to the market during the Coronavirus crisis'.
- Announcing the changes, Treasurer Josh Frydenberg said that they will shield directors from the 'threat of opportunistic class actions for allegedly falling foul of their continuous disclosure obligations if their forecasts are found to be inaccurate'.
- The changes are now in effect and will be in place for six months (until the 26 November 2020).
- The changes have been welcomed by the Australian Institute of Company Directors and separately by the Business Council of Australia.

Overview

What's changed?

Corporations (Coronavirus Economic Response) Determination (No 2) 2020 temporarily modifies the operation of the civil penalty provisions in subsections 674(2), 674(2A), 675(2) and 675(2A) of the Corporations Act 2001 (Cth) by replacing the existing objective test in 674(2)(b) and 675(2)(b) for determining whether information is material (and therefore needs to be disclosed), with a temporary new test.

The Explanatory Statement states that,

> 'The new temporary test is based on a disclosing entity or its officers' knowledge, recklessness or negligence with respect to whether certain information would have a material effect on the price or value of its enhanced disclosure (ED) securities and therefore should be disclosed under section 674 or 675 of the Act...
>
> Under the new temporary test, a person knows or is reckless or negligent as to whether the information will have a material effect on the price or value of the entity's ED securities if it knows or is reckless or negligent as to whether the information would or would be likely to influence persons who commonly invest in securities to acquire or dispose of the ED securities'.

Explaining the change, Treasurer Josh Frydenberg said that it means that 'companies and officers' will only be liable if there has been knowledge, recklessness or negligence with respect to updates on price sensitive information to the market'.

Limits the scope to commence civil proceedings

The determination also temporarily modifies the scope to commence civil proceedings - ie proceedings will only be able to be brought where alleged breaches are committed knowingly, recklessly or negligently for the six month period that the instrument is in force.

The determination impacts all 'civil consequences' for breaching continuous disclosure provisions including 'all civil consequences enforced by the Australian Securities and Investments Commission (ASIC)'.

The Determination does 'not modify the operation of the criminal offences based on subsections 674(2) or 675(2)'.

Timing

The changes will be in place for a period of six months (until 26 November 2020).

Rationale for the change

According to the Explanatory Statement, the change is intended to ensure investors continue to receive the information they need during the pandemic, while also providing some temporary protection for directors/entities against the threat of potential civil action.

The explanatory memorandum states,

> 'In this environment, the continuation of many businesses may depend on investment, and investors rely on timely disclosure of information to financial markets. It is appropriate to encourage disclosing entities to continue to disclose information to markets or to ASIC by temporarily modifying the scope to commence civil proceedings for breaches of the continuous disclosure obligations in circumstances relating to COVID-19. At the same time, it is appropriate that serious breaches committed knowingly, recklessly or negligently during the period the instrument is in force may continue to be litigated'.

Announcing the changes, Treasurer Josh Frydenberg said that in the present circumstances, he considers it appropriate to shield companies and their officers from the threat of 'opportunistic class actions'. Mr Frydenberg said,

> 'The heightened level of uncertainty around companies' future prospects as a result of the crisis also exposes companies to the threat of opportunistic class actions for allegedly falling foul of their continuous disclosure obligations if their forecasts are found to be inaccurate. In response, companies may hold back from making forecasts of future earnings or other forward-looking estimates, limiting the amount of information available to investors during this period. The changes announced today will make it harder to bring such actions against companies and officers' during the Coronavirus crisis and while allowing the market to continue to stay informed and function effectively'.

The AICD and the BCA have separately welcomed the changes

Australian Institute of Company Directors (AICD) CEO and Managing Director, Angus Armour, said 'This is a critical step in acknowledging the challenges facing the business community to rebuild in the wake of COVID-19…This measure allows directors to provide greater disclosure in this uncertain environment at the same time as it maintains measures to discipline irresponsible companies to protect the community.'

Mr Armour adds that the upcoming parliamentary inquiry into litigation funding and class actions will be an opportunity to 'look closely at how the system is working and examine whether permanent reform is necessary'.

> [Note: The inquiry referred to appears to be the Parliamentary Joint Committee on Corporations and Financial Services Inquiry into Litigation funding and the regulation of the class action industry. The Terms of Reference are here. Inquiry is due to report by 7 December 2020.]
>
> [Note: In April, the AICD identified six areas where it considered urgent reform was needed to support directors and companies through the pandemic. A temporary 'safe harbour' from liability for directors and companies to shield them from the risk of legal actions in connection with earnings guidance or forward-looking statements about company performance made in the context of the COVID-19 pandemic was one of the areas identified. See: AICD proposal for temporary continuous disclosure safe harbour. For a summary see: Governance News 08/04/2020]

Business Council of Australia (BCA) CEO Jennifer Westacott also welcomed the changes and congratulated the Treasurer 'for acting to help protect Australians from the uncertainty caused by the COVID-19 pandemic'.

Ms Westacott said,

> 'Left unchecked this issue would have hampered business confidence and performance which would have adversely impacted on the broader community at a time when business needs certainty to power the recovery, rehire workers and create more jobs. As a community our priority must be on keeping Australians in work and laying the groundwork to create new jobs, this announcement will help businesses do that. Our recovery must be jobs focussed and that means every resource businesses have should be focussed on getting Australian's safely back to work and creating new opportunities.
>
> [Sources: Corporations (Coronavirus Economic Response) Determination (No 2) 2020; Explanatory Statement; Treasurer Josh Frydenberg media release 25/05/2020; AICD media release 25/05/2020; BCA media release 25/05/2020; [registration required] The AFR 25/05/2020; The SMH 25/05/2020; [registration required] The Australian 25/05/2020]

A possible breach of continuous disclosure requirements? Labour senator Tony Sheldon has reportedly called on ASIC to investigate a possible breach of continuous disclosure requirements by Rex

The AFR reports that Labor Senator Tony Sheldon has called for the Australian Securities and Investments Commission (ASIC) to launch an investigation into whether Regional Express Holdings' (Rex) announcement in the AFR, of plans to expand its services to capital cities (to compete with other airlines) before informing the ASX, breached continuous disclosure obligations.

Reportedly, the AFR's report impacted Rex's share price and prompted the ASX temporarily halt trading in the company's shares.

In a statement in response to ASX's query, Rex said that it did not anticipate that the news would materially impact the share price, but that the company will 'err on the side of caution' going forward.

Mr Sheldon has reportedly called on ASIC to investigate the issue and to 'take appropriate enforcement action' should a breach be found to have occurred.

[Sources: [registration required] The AFR 25/05/2020; REX ASX announcement 20/05/2020]

The European Central Bank is consulting on draft guidance setting out its expectations for factoring in, monitoring and reporting on ESG risk

The European Central Bank (ECB) is consulting on draft guidance setting out its expectations for factoring in, monitoring and reporting on ESG risk. In essence, the guide proceeds on the basis that banks are expected to integrate climate and environmental risks into their business strategies, governance and risk management frameworks, and into their disclosure. The guide sets out the ECB's 'understanding of the safe and prudent management of climate-related and environmental risks under the current prudential framework' and the ECB's expectations of the way institutions should consider/manage/disclose climate risks.

Content of climate disclosure: ECB expectations

The draft guide says that the ECB expects that the climate related disclosures should include (among other things):

- Financially material climate risks in line with the European Commission's Guidelines on non-financial reporting: Supplement on reporting climate-related information which integrates the recommendations of the Task-Force on Climate-related Financial Disclosures (TCFD).
- The institution's Scope 1, 2 and 3 GHG emissions and the metrics used, relevant targets and the performance of the institution against those targets.
- The amount/percentage of carbon-related assets in each portfolio in € millions or as a percentage of the current portfolio value and a 'forward-looking best estimate of this amount or percentage over the course of their [the institution's] planning horizon'.
- The Key Performance Indicators (KPIs) and Key Risk Indicators (KRIs) used for the purposes of their [the institution's] strategy-setting and risk management.

Guidance is non-binding on institutions but will inform the 'supervisory dialogue' going forward

The ECB explains that while not binding on institutions, the guide will be part of the 'supervisory dialogue' with institutions once finalised. The ECB says that it will discuss the expectations in the guide and 'any possible divergences in institutions' practices' with institutions directly.

The ECB's expectation is that banks assess their current practices in light of the draft guidance, and where necessary start to adapt their approach.

Next steps

- As part of the consultation process the ECB will organise an Industry Dialogue Webinar on 17 June, as well as a public hearing on 2 September.
- Written feedback is due by 25 September.

[Source: ECB: press release; draft guidance: Draft ECB Guide on climate-related and environmental risks; FAQs]

Regulators

FINSIA Forum – coverage of regulators' opening remarks

COVID-19: APRA's position on capital buffers, dividends and loan deferrals, and the rationale behind it

In his opening address to the Financial Services Institute of Australasia (FINSIA) Forum, Australian Prudential Regulation Authority Chair Wayne Byres spoke primarily about APRA's response to COVID-19, and more particularly APRA's position on capital buffers, dividends and loan deferrals, and the rationale behind it.

Some Key Points

- Strength of the financial services sector has stood it in good stead to be able to respond quickly to the pandemic: Mr Byres said that he considers that the strength of the financial system going into COVID-19 has enabled the sector to play a key role in 'helping soften the blow' to the community. For example: insurers have been in a position to modify terms/conditions to support customers impacted by the pandemic, the superannuation sector had been able rapidly process applications under the government's early release of superannuation scheme and banks have been 'a shock absorber to the economy'.
- APRA has reset priorities in response to the pandemic: Mr Byres said that the financial services sector has not been alone in having to rapidly respond to the pandemic, regulators have also had to rapidly respond. He then outlined some of the steps APRA has taken to respond to the crisis, including altering its policy/supervisory agenda and deferring a number of planned projects. He then outlined the regulators' actions/expectations with respect to: 1) capital buffers; 2) dividends/bonuses; and 3) loan deferrals.

Capital buffers

- Mr Byres said that one of the first actions APRA took in response to CO VID-19, was to issue a statement on the 'unquestionably strong' capital benchmarks that have been built up over time to enable banks to absorb losses in time of stress. Mr Byres reiterated that it is appropriate now for banks to draw on those buffers, despite the fact that it will mean that capital rations decrease over the next 12 months. This decrease, he said 'should surprise no one' and should be 'kept in perspective'.
- Mr Byres said that APRA's message 'to make use of capital buffers to support economic activity has not, though, been without strings attached'. APRA's preference is that the funds will be directed either towards sustaining and growing the business and/or to absorbing losses rather than to rewarding shareholders. This he said, explains APRA's position/approach to dividends/bonuses.

Dividends and bonuses

Commenting briefly on APRA's approach to dividends and bonuses – APRA wrote to banks/insurers in early April to request that they 'seriously consider deferring or at least materially reducing' discretionary capital distributions in the months ahead - Mr Byres said that APRA did not 'intervene on dividends lightly'. Mr Byres said:

> 'We recognise the important role they play in the investment returns of many Australians. However, our mandate is first and foremost to protect the safety of bank deposits and ensure insurers have the means to pay claims. While decisions such as this are invariably difficult, we believe we have chosen a balanced approach. We hope the impact on dividends from the current COVID-19 crisis will be temporary, but obviously the outlook remains highly uncertain. For that reason, we firmly believe prudence is the appropriate strategy for the time being. Our approach is designed to underpin financial system stability over the longer term, which ultimately benefits all Australians'.

Bank loan payment deferrals

Commenting briefly on APRA's approach to bank loan payment deferrals, Mr Byres explained that APRA was 'comfortable granting capital concessions to banks offering loan deferrals' because of the strength of the banks in question and their ability to 'absorb eventual losses' should that be required. Mr Byres said that it was 'another on balance judgement, weighing up the risks and benefits. Banks' ability to provide support is not limitless, but it was the right decision for the time. It is not without risk, however, and in the interests of transparency we have also required banks to disclose the extent of deferrals granted, so that investors and markets can understand the impact'.

Mr Byres concluded his speech by saying that APRA's actions are based on facilitating an 'orderly adjustment to the post-COVID world. I would stress that does not mean hiding from reality, but we can help facilitate an adjustment that is not excessively disruptive. These actions, and the others we have taken, are designed with that goal in mind'.

> [Source: APRA Chair Wayne Byres - Opening remarks to FINSIA webinar 'The Regulators: priorities update' 21/05/2020; The SMH 21/05/2020; [registration required] the AFR 21/05/2020]

RBA says current measures appear to be working and has called for a 'reinvigorated economic reform agenda'

Key Takeouts

- **Capital buffers:** Taking a similar line to APRA Chair Wayne Byres, RBA Governor Philip Lowe said 'it is both understandable and desirable that lenders draw on the buffers that were built up in better times. It is in the banks' own interest and in the interest of the broader Australian community that banks support their customers now and also support them in the recovery phase when credit will be needed so that businesses can once again expand' Mr Lowe said.
- **Availability of credit:** Mr Lowe reiterated the imperative for lenders to continue to support the flow of credit to the economy and the commitment of the Council of Financial Regulators to support them in this.
- **Policy measures seem to be working:** On the economic front, Mr Lowe said that the RBA's package of policy measures announced in mid-March to keep funding costs down and maintain the flow of credit appears to be working as expected.
- **Economic reform:** On the issue of economic reform Mr Lowe said, 'there is no shortage of reports filled with ideas of how to do this and how to make Australia a great place for businesses to expand, invest, innovate and hire people. If we can take up some of these ideas, we can once again experience strong and sustainable growth'.

In his address to the Financial Services Institute of Australasia (FINSIA) Forum, Reserve Bank of Australia Governor Philip Lowe spoke about the Council of Financial Regulators' approach to responding to COVID-19 and reiterated the importance and continuing relevance of the statements released by the Council in in March and briefly, about the economic outlook post-pandemic.

Four Key Points made by the Council of Financial Regulators in March remain relevant

Mr Lowe said that the four points made by the Council of Financial Regulators in March remain relevant. These are that:

1. Australia's strong economic position going into the crisis;
2. that capital and liquidity buffers are available to be drawn upon;
3. the imperative for lenders to continue to support the flow of credit to the economy (and the commitment of the Council to assisting in this); and
4. the need for regulators to rethink/alter their regulatory priorities (as they have) to allow financial institutions to focus on serving their customers.

On the topic of capital buffers, Mr Lowe said:

> 'I would like to reinforce this point today. If there was ever a time to allow these buffers to be used, now is that time. We should not expect to see capital buffers be maintained during a once-in-a-century shock. These buffers have been built up to be utilised in events such as this, and some reduction in capital ratios is entirely appropriate as lenders support their customers through this difficult period'.

Economic outlook

Mr Lowe described the impact of COVID-19 as the 'biggest and the most sudden economic contraction since the 1930s' but drew a distinction between previous contractions and the current one, because the current crisis is both an economic and a health crisis. This difference he said, has meant that the fiscal and monetary policy response has been different.

Commenting on Australia's response, Mr Lowe said that he considers Australia has taken the right approach but that the future remains 'unusually uncertain'. For example the pace at which restrictions will be eased is not known and the level of consumer confidence in their health and finances is also uncertain. Mr Lowe observed that the level of uncertainty is such that it led to the RBA to take the 'unusual step of providing upside and downside scenarios as well as a baseline scenario' in the latest Statement on Monetary Policy.

Mr Lowe said that he considers that 'restoring people's confidence on two fronts', restoring confidence in their health and confidence in their finances (job/income security) are going to be key challenges.

On the economic front, Mr Lowe said that the RBA's package of policy measures announced in mid-March to keep funding costs down and maintain the flow of credit eg cutting the cash rate to 25 basis points, targeting a yield of 25 basis points for 3-year Australian Government bonds and making a Term Funding Facility available to the banks to support credit to businesses, are also working as expected.

Mr Lowe said that:

> 'Banks have reduced interest rates to record lows their lending rates to record lows, with interest rates for small business declining the most. The yield on 3-year bonds has settled at the target and the government bond markets in Australia are working well again. To date, the RBA has bought around $50 billion of government bonds. We have scaled back our purchases recently as conditions have continued to improve, and over the past week we have not purchased any bonds. We remain prepared to scale up these purchases again if necessary to achieve the yield curve target and to assist smooth market functioning.'

Economic reform?

My Lowe concluded by observing that in addition to sound monetary policy, fiscal support during the pandemic and over the coming months, a 'reinvigorated economic reform agenda' is also imperative.

'As I have said on other occasions, there is no shortage of reports filled with ideas of how to do this and how to make Australia a great place for businesses to expand, invest, innovate and hire people. If we can take up some of these ideas, we can once again experience strong and sustainable growth'.

Financial institutions will play a critical role in the recovery

Finally, Mr Lowe underlined the role that Australia's financial institutions will necessarily play in the recovery.

'Australia's financial institutions also have an important role in helping us get there. They are helping us to build the bridge to the point when the virus is contained and our economy recovers. As part of this effort, it is both understandable and desirable that lenders draw on the buffers that were built up in better times. It is in the banks' own interest and in the interest of the broader Australian community that banks support their customers now and also support them in the recovery phase when credit will be needed so that businesses can once again expand'.

[Source: Speech by RBA Governor Philip Lowe to the FINSIA Forum 21/05/2020]

ASIC to release a revised set of strategic priorities in the next few months

Key Takeouts

- ASIC plans to announce a revised set of strategic priorities in the next few months
- ASIC has adapted its regulatory priorities in the immediate term to focus on continues to expect financial institutions to focus on maintaining the integrity of markets and protecting vulnerable consumers
- ASIC's enforcement work is continuing with a strong focus on issues where ASIC considers there to be a 'significant risk of consumer harm'. However, ASIC's work in addressing issues identified by the Hayne Commission remains a priority for the regulator.
- ASIC's regulatory expectations – ASIC continues to expect entities to behave with 'utmost professionalism'. Mr Shipton said that ASIC's expectation is that entities: a) act fairly, honestly and efficiently; b) report material breaches of the law; c) maintain proper records of the financial services they provide; and d) ensure appropriate supervision of financial and credit services and activities, even where staff are working remotely.

In his address to the Financial Services Institute of Australasia (FINSIA) Forum, Australian Securities and Investments Commission (ASIC) Chair James Shipton spoke about ASIC's response to the COVID-19 pandemic and ASIC's expectation that institutions continue to behave with the 'utmost professionalism'.

Mr Shipton also said that ASIC plans to announce a revised set of strategic priorities for the next few months in the coming weeks.

Some Key Points

- **ASIC has adapted its regulatory priorities:** Mr Shipton said that ASIC had adapt ed its regulatory priorities 'for the time being' including by deferring some activities eg delaying the final implementation of the 'best-interests' duty for mortgage brokers and the design and distribution obligations for financial products issuers. The change has allowed ASIC to redeploy some staff to enable the regulator to 'address issues of immediate concern' such as maintaining the integrity of markets and protecting vulnerable consumers. Mr Shipton said that a revised set of strategic priorities for the 'next few months' will be announcing in the coming weeks. He then outlined ASIC's adjusted approach and some of the work the regulator has being doing in response to the crisis.
- **Smooth operation of equity and capital markets:** Mr Shipton said that ASIC has acted to ensure that Australia's equity and capital markets have continued to 'operate in a fair, orderly and efficient manner' by imposing a daily limit on the total number of ASX and CHI-X equity trades, thereby preventing delays in settlement that would otherwise 'have undermined investor confidence in the market and the wider economy at a critical and fragile time'. Mr Shipton said that the requirement has now been relaxed but that ASIC continues to monitor trading volumes. Mr Shipton said that ASIC also authorised the ASX's relaxation of rules that limited share placements by listed companies thereby enhancing 'the ability of companies to bolster their balance sheets in a liquidity constrained environment'. As a result of ASIC's actions, Mr Shipton said that listed companies have raised in excess of $21 billion in 80 transactions since the COVID-19 crisis began.
- **Enforcement work:** ASIC has continued its enforcement work focusing on issues where there is 'significant risk of consumer harm'. Mr Shipton said that this work is 'particularly important at a time when the community is being asked to bear a very heavy burden in meeting the economic and social costs of the recovery. Past illegal conduct, including behaviour identified by the Hayne Royal Commission, must continue to be a priority. Moreover, swift action must be taken where firms or individuals attempt to take advantage of consumers at a time of heightened vulnerability and financial strain'.
- **Actively 'warning' consumers where there is risk of harm:** Mr Shipton said that there have been a number of instances where ASIC has actively warned consumers about specific risks that could potentially result in significant financial detriment eg ASIC has warned consumers about unlicensed and inappropriate financial advice and well as about the risk of scams and fraud.

- **ASIC has 'enhanced' the information on the MoneySmart website**: Mr Shipton said that ASIC has 'enhanced' information on the MoneySmart website and increased 'targeted consumer messaging'. For example, information around accessing financial advice has been enhanced.
- **Regulatory expectations – ASIC continues to expect entities to behave with 'utmost professionalism':** Mr Shipton said that ASIC will continue to 'make clear to regulated entities our expectations on how they should behave. In essence, ASIC's expectation is that entities: a) act fairly, honestly and efficiently; b) report material breaches of the law; c) maintain proper records of the financial services they provide; and d) ensure appropriate supervision of financial and credit services and activities, even where staff are working remotely. 'In other words, we expect the industry to adopt a stance of utmost professionalism in everything that they do right now' Mr Shipton said.

Mr Shipton concluded by emphasising the importance of 'living up' to the 'professional expectations of the community' during the pandemic. 'More than ever before, we – and the community – expect financial services professionals to perform their crucial roles competently and conscientiously. That is, with the utmost professionalism' he said.

[Source: Opening remarks by James Shipton, Chair, Australian Securities and Investments Commission, to the Financial Services Institute of Australasia (FINSIA) webinar 'The Regulators: Priorities Updated', 21/05/2020]

Other Developments

FRC Chair to step down at the end of May to return to the private sector

In a short statement, the UK Financial Reporting Council (FRC) announced that Chair Sir Simon Dingemans will step down from the regulator at the end of May and is 'expected to return' to a 'more full time role in the private sector'.

The reason given for Mr Dingemans' decision is that it has not proven possible in practice for him to supplement his part time FRC duties with other roles as originally intended. The FRC says that it was agreed with Mr Dingemans, at the time he took on the part time role of Chair, that he would be free to take on additional roles on the condition that they did not conflict with his FRC responsibilities.

The Department of Business, Energy and Industrial Strategy (BEIS) will now 'take forward the appointment of a new FRC Chair.'

[Source: FRC media release 20/05/2020]

Financial Services

Top Story | Foreign financial services regime – your questions answered

Following on from consultations, the Australian Securities and Investments Commission (ASIC) has finalised and released its new regulatory framework for foreign financial services providers (FFSPs) providing financial services to Australian wholesale clients.

MinterEllison has released an article explaining the changes. You can access the full text on our website here.

Ban on conflicted remuneration extended to LICs from 1 July 2020

Treasurer Josh Frydenberg has announced that the government will extend the ban on conflicted remuneration – ie extend the ban on stamping fees which are an upfront one-off commission paid to financial services licensees for their role in capital raisings associated with the initial public offerings of shares - to listed investment companies and trusts (LICs) from 1 July 2020.

The Australian Securities and Investments Commission (ASIC) will 'actively monitor arrangements' both in the lead up to and following the introduction of the changes.

The decision follows Treasury's consultation on the merits of current exemption.

Announcing the government's decision, Mr Frydenberg said that

> 'whilst new LICs capital raisings have largely ceased since the inception of COVID-19, it is important that the ban on conflicted remuneration is extended ahead of any resumption of capital raising activity….Extending the ban on conflicted remuneration to LICs will address risks associated with the potential mis-selling of these products to retail consumers, improve competitive neutrality in the funds management industry and provide long term certainty so that this segment of Australia's capital markets can continue to operate effectively and provide investors with opportunities to diversify their investments'.

Mr Frydenberg said that the changes will not impact the treatment of equity and debt securities in trading companies (including hybrids), real estate investment trusts (REITs), and listed infrastructure investments. 'Persons providing personal advice to a retail client in relation to these products will continue to be legally required to act in that client's best interests' Mr Frydenberg said.

Response

In a statement, welcoming the removal of the exemption, the Financial Planning Association of Australia (FPA) said that it will ensure continued confidence to invest in LICS and LITs.

The statement also called on the senate to pass the 'FASEA extension Bill' – ie Treasury Laws Amendment (2019 Measures No.3) Bill 2019 - which (among other things) will grant financial planners an extension to complete new education requirements at the next parliamentary sitting on 10 June.

The FPA writes,

> 'Many of our members have been eagerly waiting on confirmation that the FASEA exam deadline would be extended, giving them critical time to focus on helping their clients navigate the COVID-19 pandemic and economic crisis. A further delay from Senate will add even greater uncertainty to financial planners, who are expected to help 2.7 million Australians seeking financial advice over the next three months in response to major changes in their employment, their investments and their prospects for retirement'.
>
> [Sources: Treasurer Josh Frydenberg media release 21/05/2020; FPA media release 21/05/2020; [registration required] The AFR 21/05/2020]

Litigation funders will be regulated under the Corporations Act

Treasurer Josh Frydenberg has announced that, to increase regulatory oversight of litigation funders, they will be required obtain an Australian Financial Services Licence from the Australian Securities and Investments Commission (ASIC) and to comply with the managed investment scheme regime.

Mr Frydenberg said that the changes will mean that funders will, as AFSL holders, be obligated to: a) act honestly, efficiently and fairly; b) maintain an appropriate level of competence to provide financial services; and c) have adequate organisational resources to provide the financial services covered by the licence. In addition, the changes are expected to increase transparency around the operation of litigation funders in Australia.

The Treasurer said that the changes complement the Parliamentary Joint Committee and Financial Services Inquiry into litigation Funding and the regulation of the class action industry which is due to report on 7 December.

Timing? The planned implementation date for the changes is 22 August 2020 (three months from the Treasurer's announcement).

Response

In a short statement welcoming the Treasurer's announcement, Australian Institute of Company Directors (AICD) CEO and Managing Director, Angus Armour said that the AICD has 'long called for more robust regulation of litigation funders and that the 'move is a significant first step in addressing concerns about Australia's securities class action industry'.

[Source: Treasurer Josh Frydenberg media release 22/05/2020; AICD media release 22/05/2020]

Deferral of retirement income framework legislation announced to allow more time for consultation

Context: The Retirement Income Covenant is intended to establish an additional obligation for superannuation trustees to formulate a retirement income strategy for their members. The new obligation was to commence on 1 July 2020.

Deferral of the commencement date: Assistant Minister for financial services, superannuation and financial technology Jane Hume has announced that the government has decided to defer the introduction of the new requirement to allow for 'continued consultation and legislative drafting' post pandemic and to allow the drafting of the measure to be informed by the Retirement Income Review.

Timing? Ms Hume said that the new implementation date will be determined following further consultation.

Announcing the government's decision Ms Hume said that the deferral of the legislation need not stand in the way of trustees developing strategies now.

> 'We've been working for some time on a Retirement Income Covenant. While efficient accumulation is imperative and we are steadily chipping away at the inefficiencies of that part of the system, we need to build a smoother transition from the accumulation to the de-accumulation phase. Of course, there is nothing stopping funds and their trustees from developing retirement income strategies now and we'd encourage them to do so. Trustees don't need to wait for us to legislate the Covenant' Ms Hume said

[Source: Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume media release 22/05/2020]

Coalition MP Tim Wilson has reportedly called for ASIC and APRA to review conflicts of interest arising from 'vertical integration' in industry superannuation funds

The AFR reports that House Economics Committee Chair Tim Wilson has written to the Australian Prudential Regulation Authority (APRA) and to the Australian Securities and Investments Commission (ASIC) to request that they investigate the 'extent of conflicts of interests that arise from the vertical integration' in industry superannuation funds.

Reportedly, Mr Wilson has also said that the Committee is preparing a number of questions for trustees around the issue.

[Source: [registration required] The AFR 25/05/2020]

Early Access to Superannuation Scheme: Treasury confirms it is not aware of any evidence that superannuation funds have encountered liquidity issues as a result of the scheme

The Senate Select Committee on COVID-19 held a public hearing on 21 May (the full text of the transcript is here.)

Among other things, the Inquiry heard that Treasury is not aware of any evidence that superannuation funds have encountered liquidity issues as a result of the implementation of the government's early access to superannuation scheme.

Deputy Secretary of the Fiscal Group at the Treasury Jennifer Wilkinson said that to date the Australian Prudential Regulation Authority (APRA) has not notified Treasury of any issues.

Treasury have 'continued to engage with APRA quite closely through this process, and APRA have been monitoring liquidity issues. They have not provided us with any indication that they've got any concerns about there being liquidity issues in any funds, but they're continuing to monitor it closely' Ms Wilkinson said.

Asked whether individual superannuation funds had advised of any liquidity issues, Ms Wilkinson said that 'I'm not aware that we have been advised by any super fund that there are particular liquidity issues that they're facing on account of these withdrawals' but would take the question on notice.

Ms Wilkinson was also asked about whether Treasury was aware of any additional cases of possible fraud in connection with the early release scheme that had been referred to the authorities since the last hearing. Ms Wilkinson said that she had no update. 'There's obviously the investigation which is still being undertaken by the AFP and the ATO. I don't have any updates on what was provided at the last hearing, and I'm not aware of there being any other issues which have been raised. I don't have any updates in relation to that investigation' Ms Wilkinson said.

[Source: Senate Select Committee on COVID-19 Transcript 21/05/2020]

Early Access to Superannuation Scheme: $1.7bn worth of applications paid in the week to 17 May

The Australian Prudential Regulation Authority (APRA) has published the industry and fund-level data on the temporary early release of superannuation scheme for the period 20 April to 17 May.

- Overall, since the inception of the scheme 1.59 million applications have been received and of this number 1.41 million applications totalling $109.6 billion, have been paid
- Over the week to 17 May $1.7 billion worth of payments were made
- The average payment amount is $7510
- 94% of application are being processed within APRA's guideline of 5 business days, with the average time taken 3.3 business days

[Source: APRA media release 25/05/2020]

In Brief | Early Access to Superannuation Scheme – arrest announced. The Department of Foreign Affairs has announced that a woman has been charged with fraudulently seeking to gain early access to other people's superannuation savings by submitting several false claims on behalf of other people. DFAT says that the arrest follows a referral by the ATO

[Source: [registration required – accessed via LexisNexis Capital Monitor] DFAT media release 23/05/2020]

In Brief | The AIST has advised that the ATO has temporarily suspended the ATO's Supermatch tool due to identity fraud concerns. The AIST quotes the ATO as saying that the service has been suspended 'until such time as the industry can work with the ATO to provide increased certainty that they have mitigated the risk of weak online account creation controls'

[Source: AIST Policy News 21/05/2020]

In Brief | APRA has released superannuation statistics for March 2020. According to APRA, total superannuation assets decreased 7.7% over the March quarter. The SMH reports that the quarter is the worst on record for the sector

[Source: APRA media release 26/05/2020; The SMH 26/05/2020]

In Brief | Another step towards the launch of Open Banking in July: The ACCC has launched the Consumer Data Right Register and Accreditation Application Platform (RAAP) which the Treasurer and Assistant Minister for Financial Services and Financial Technology describe as 'a portal where businesses can apply to be accredited to be able to transmit data under the CDR regime. It also represents the core IT infrastructure that will support the delivery of the CDR ensuring that consumers' data is only shared securely between parties that are accredited by the ACCC'

[Source: Joint media release: Treasurer Josh Frydenberg and Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume 26/05/2020; ACCC media release 26/05/2020]

In Brief | Modelling bushfire insurance on Medicare? With 1 in 20 Australian homes estimated to be uninsurable by the end of the century, a UNSW report argues that an alternative fire insurance model, based on fairness as social justice, rather than the current market driven model, would deliver better outcomes

[Sources: media release 21/05/2020; UNSW Report: The Future of Fire Insurance in Australia 2020 by Professor Jeremy Moss and Daniel Burkett]

Accounting and Audit

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In Brief | COVID-19: ASIC has released FAQs on financial reporting and audit. Among other things, the guidance sets out ASIC's focus areas for companies, directors and auditors for financial reporting in light of the pandemic

[Source: COVID-19 implications for financial reporting and audit: Frequently asked questions (FAQs) 26/05/2020]

In Brief | COVID-10: The AASB and AUASB have released joint guidance for directors' and management's on their duties and responsibilities in relation to assessments of solvency and going concern, and to assist auditors by providing an overview of an auditor's obligations in relation to going concern and directors' declarations of solvency

[Source: AASB media release 21/05/2020; Joint publication by the AASB and AUASB: The Impact of COVID-19 on Going Concern and Related Assessments May 2020]

In Brief | The AUASB has released Frequently Asked Questions on auditing accounting estimates and related disclosures in response to a COVID-19 event

[Source: AUASB media release 19/05/2020]

Insolvency and Restructuring

COVID-19: UK Insolvency and Governance Bill introduced

The Corporate Insolvency and Governance Bill was introduced in the UK House of Commons on 20 May 2020 and is currently at second reading stage.

Broadly, the Bill proposes to:

- introduce greater flexibility (by introducing new restructuring tools) into the insolvency regime, 'allowing companies breathing space to explore options for rescue whilst supplies are protected, so they can have the maximum chance of survival';
- temporarily suspend parts of insolvency law (eg wrongful trading provisions) to support directors to continue trading through the pandemic without the threat of personal liability and to protect companies from aggressive creditor action;
- provide companies and other bodies with temporary relief from company filing requirements including extending reporting deadlines for: confirmation statements, accounts, registrations of charges (mortgage), and event-driven filings (eg change of director/people with significant control)
- relax requirements relating to meetings (eg temporarily relax requirements concerning how meetings are held to enable companies and other bodies to hold AGMs and other meetings in a manner that is consistent with their constitutional arrangements and the need to limit the spread of COVID-19).

[Sources: Media release 21/05/2020; Corporate Insolvency and Governance Bill 2019-21]

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