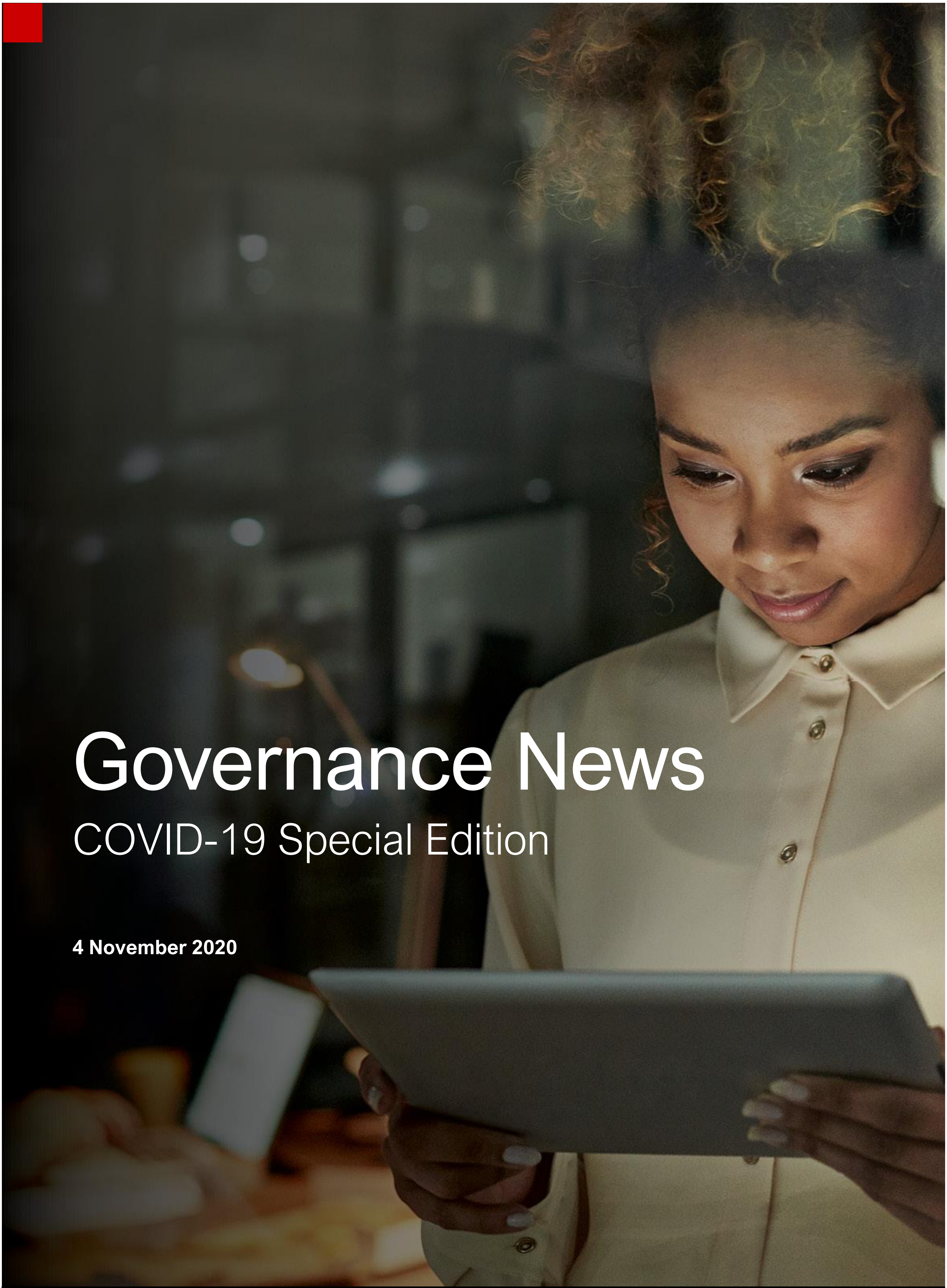


Governance News

COVID-19 Special Edition

4 November 2020

Contents

Boards and Directors

The AICD's latest Director Sentiment index finds that supporting strong organisational culture and increasing board diversity remain key priorities for boards

Key Takeouts

- The Australian Institute of Company Directors (AICD) latest Director Sentiment Index (DSI) has identified that directors are continuing to focus on supporting strong organisational culture with 86% of respondents indicating that their board is trying to effect cultural change within their organisation.
- Likewise, boards are focused on increasing board diversity. Most boards are focused on increasing diversity of skills (75% of directors indicated that their board is taking active steps to increase skills diversity)
- 51% of directors view climate risk as a material risk to their organisation. In addition, climate change was rated by respondents as among the three key economic challenges facing Australian businesses and ranked in the top three areas on which directors believe government's should be focusing.

The Australian Institute of Company Directors (AICD) has released the latest Director Sentiment Index (DSI) tracking directors' views on a broad range of economic and governance issues.

Some Key Takeaways

Director views on governance issues

Most boards are taking active steps to foster strong organisational culture

- Most directors (86%) indicated that their board is trying to effect cultural change within their organisation.
- The majority of directors (68%) consider that their own board has sufficient oversight of the culture of their organisation.

Increasing board diversity is a focus for most boards

- 75% of directors indicated that their board is taking active steps to increase skills diversity on the board.
- 53% of directors said that their board is actively seeking to improve board gender diversity. 28% of respondents indicated that gender was 'not relevant'.
- 35% of directors indicated that their board is taking active steps to increase ethnic diversity on the board. 31% of respondents indicated that ethnicity was not relevant.
- 31% of directors indicated that their board is taking no steps to increase the age diversity on the board. 35% of directors indicated that age was 'not relevant'.

Views on corporate reporting are mixed

- Adequacy of public company remuneration reports: 61% of directors view public company remuneration reports as 'about right', 'somewhat adequate' or 'very adequate'. 39% view them as inadequate to a greater or lesser extent.
- 46% of directors consider corporate reporting to be effective. 21% said that they have 'no opinion'.

Stakeholder perspectives/considerations

- 76% of directors nominated 'advice from the CEO' as their leading source of information on stakeholder perspectives/considerations.
- Board composition (eg appointing directors with insight into particular stakeholder groups) was nominated by 54% of directors.
- Presentations to the board by stakeholder representatives (eg consumers, employees, etc) was nominated by 33% of directors.

- 30% of directors nominated stakeholder days or community forums with key stakeholders invited as their key source of this kind of information.

Current AGM system

37% of directors rate the current AGM system as dysfunctional. Interestingly, a similar proportion 36% expressed 'no opinion'.

Primary factors contributing to directors' willingness to serve (or not) on boards

- Making a contribution to economy/society was the leading factor (86% of respondents) contributing to directors' willingness to serve on a board.
- Director liability (based on current legislation) was identified as a negative factor in the context of willingness to serve on a board with 57% of respondents indicating that it would negatively impact their willingness to do so.

Views on director liability provisions

- 53% of directors indicated that director liability provisions have zero impact on their willingness to continue to serve on a board. 39% said that director liability provisions have a negative impact.
- 50% of directors indicated that director liability provisions have a negative impact on their willingness to accept new board appointments. 42% indicated that there was no impact.
- 54% of directors indicated that director liability provisions have no impact on their business decision making. 33% of directors indicated that director liability provisions have a negative impact.

Director views on red tape and regulation

- Views on the current level of government regulation are mixed. 52% of directors perceive current government regulation as too onerous while 40% believe it to be 'about right'.
- 41% of directors expect the level of red tape to remain the same in the next 12 months. 29% expect it to increase or increase a lot over this period.
- Consistent with the results in H1 2020, directors identified the following as the top three areas of their businesses most impacted by red tape: 1) corporate reporting (70% of directors); 2) workplace health/safety (66% of directors); and 3) preparing/paying taxes (60% of directors). 48% identified environmental compliance as the area most impacted.

Topical issues

- Top three concerns for directors: The COVID-19 pandemic continues to be top concern for directors, followed by sustainability and long term growth prospects and global economic conditions.
- Key economic challenges: The top three economic challenges facing Australian businesses are: 1) COVID-19 pandemic (62%); 2) global economic uncertainty (38%); 3) China's outlook (19%) and climate change (also 19%).
- Climate risk: 51% of directors view climate risk as a material risk to their organisation. 25% of respondents disagreed. A similar proportion (24%) were neutral on the question.
- Insolvent trading relief: 70% of directors indicated that temporary relief from personal liability for trading while insolvent had little or no impact on board decisions to continue trading during COVID 19. Nearly a third of directors (31%) indicated that they had some level of concern about making going concern or solvency assessments due to impact of COVID 19.

Views on government policy agenda

- Climate change should be the government's top policy priority: The top three areas on which respondents would like to see the government focus in the shorter and longer term are: 1) climate change; 2) energy policy; and 3) infrastructure.
- Increased government spending on infrastructure required: Most directors (69%) believe that government spending on infrastructure is too low, in particular, respondents are of the view that spending on renewable energy sources should be increased, consistent with H1 2020 survey results. Other areas where directors

consider that infrastructure spending should increase include: a) regional infrastructure; b) Telco networks; and c) water supply.

- Directors indicated that they would be most supportive of proposals for large scale public investment in 1) innovation, R&D and skills and training; 2) high speed trains/inland rail; and 3) renewable energy and a 'green new deal'. The report comments that the only policy proposal that directors have a net balance of opposition to is the government's proposed plan for a 'gas led' recovery.
- Directors indicated that they would be most supportive of policy proposals to: a) establish a sovereign wealth fund/citizen's wealth fund; b) introduce free universal childcare; and c) significantly increase the minimum wage.

Taxation reform

- Most directors consider that the level of personal (67%) and corporate taxation (51%) is too high.
- Directors nominated: 1) income tax; 2) company tax; and 3) state based taxes as the top three priority areas for taxation reform.

Boards continue to be risk averse

73% of directors believe that there is a risk averse decision making culture on Australian boards. 32% of directors nominated excessive focus on compliance over performance continues as the key reason for this. Followed by: pressure from shareholders for short-term returns (16%) and lack of board diversity (also 16%).

Overall business outlook

- Overall, directors' confidence in the business outlook over the next 12 months has improved on H1 2020, but is still negative. Directors are more optimistic about their own sector with 35% indicating that they are 'quite optimistic' or 'very optimistic'. A similar proportion (35%) rated their outlooks as neutral.
- 42% of directors expect their business to grow in the coming year (an improvement of 14% on H1 2020).
- 44% of directors expect a decrease in profits compared to the previous six months and 40% expect a decrease in profits compared to the budget forecast for the current six months.
- 80% of directors expect a rise in the level of mergers and acquisitions over the coming year.

[Sources: AICD media releases 22/10/2020; 23/10/2020; Full text report: Director Sentiment Index; AICD results summary]

PwC annual director survey finds boards are increasingly focused on ESG issues, but remain slow to deal with board underperformance or to prioritise succession planning

Key Takeouts

- PwC's latest annual director survey has found that the directors of US public companies are increasingly aware or and focused on, a range of environmental, social and governance (ESG) issues and have increased their direct engagement with shareholders.
- The report also found that formal board succession planning is not a priority for boards in practice, despite investor focus on the issue and despite the fact that a large minority of individual directors believe there is a need for immediate change on their own board.
- Boards also remain slow to act to replace underperforming board members.
- Some directors reported that they avoid voicing dissenting views in board meetings, in the interests of maintaining a collegial atmosphere.
- A key theme of the report is the suggestion that the COVID-19 recovery is an opportunity for boards to refocus their strategy and approach on a range of issues to ensure it is focused on delivery of long-term value, including taking concrete steps to move forward on ESG issues and board refreshment/succession planning.

PwC has released its annual director survey - 2020 Annual Corporate Directors Survey – tracking trends in the way in which directors of US public companies view a range of corporate governance issues including: ESG issues;

diversity and inclusion; board succession/refreshment; executive compensation; and crisis planning and management.

A key theme running through the report, is that the current environment offers boards an opportunity to reassess and if necessary refocus their approach and strategy on the longer term. The report states,

> 'Boards face all of these challenges against the backdrop of a global crisis. But while the challenges are significant, this moment of crisis also creates opportunities. Forward-thinking boards find ways to inspire positive change. With strong leadership, boards may be able to leverage the crisis into changes in board composition, revamped board practices, re-envisioned diversity and inclusion efforts, and re-focused board priorities'.

About the survey

In 2020, 693 directors from a cross section of companies from various industries participated in the survey.

- 75% of respondents were directors of companies with an annual revenue of more than $1bn.
- 76% respondents were men and 24% were women.
- 61% of respondents have served on their board for -more than five years.

Some Interesting Findings

Director attitudes to ESG

- Boards are more aware of and focused on ESG issues than previously. For example: 45% of directors said that ESG issues are a regular item for discussion at board meetings (up from 34% in 2019).
- Boards place more value on disclosure of ESG issues than previously, with 41% of respondents indicating that disclosure of their company's efforts on ESG Issues should be a management priority (up 11% on 2019).
- Directors are also giving greater weight to ESG expertise on the board: 60% of respondents considered environmental/sustainability expertise to be important in the boardroom (up 9% on 2019).
- Interestingly, despite the increased board focus on ESG, the number of directors who consider that ESG issues financially impact their company's performance fell from 49% in 2019 to 38% this year.
- The proportion of directors who consider that a range of ESG issues, including climate risk, should play a role in forming company strategy is on the rise. For example:
  - 68% of directors consider that human rights should be factored into company strategy (up from 60% in 2019)
  - 67% of directors consider that climate change should considered (up from 54% in 2019)
  - 48% of directors consider that income inequality should be considered (up from 42% in 2019).
- The report attributes the increased focus on ESG generally to the continued and increasing pressure from institutional investors, on companies to both sharpen their focus on delivery of long-term sustainable value, and to provide greater transparency around how ESG risks/opportunities are being managed. This pressure, the report comments, has continued despite the pandemic.
- The report suggests that upheaval caused by the pandemic, is an opportunity (for companies that have not previously done so) to focus on the longer-term.

> 'As companies are facing financial pressures from many sides during the continuing pandemic and economic recession, those that have taken a broader view of their long-term strategy, including responding to ESG issues, may be in a better position to confront these challenges. For companies that have traditionally focused on the narrow question of financial performance quarter to quarter, 2020 may offer the inflection point to consider the broader, long-term context'.

Direct engagement with shareholders

- Director engagement with institutional investors is on the rise: In 2020, 58% of directors indicated that a member of the board (other than the CEO) is involved in engagement discussions (up from 42% in 2017).

- Overall, directors view increased engagement as a positive: 87% of directors consider that increased engagement positively impacts proxy voting and more than 76% also see a positive impact on investing decisions.

Acting to support strong culture

Taking action to support strong company culture/address issues is a priority for more boards now than was previously the case. For example: 67% of directors indicated that their companies have rolled out 'enhanced' employee development/training programs (up from 60% in 2019); 38% of directors said that reporting to the board on culture metrics has increased (up from 29% in 2019) and 28% indicated that employee compensation plans had been revised to ensure they support desired behaviours (up from 17% in 2019).

Executive compensation

- Almost all (95%) of directors agree/somewhat agree that incentive pay plans promote shareholder value.
- 68% of directors agree/somewhat agree that executives are overpaid and 52% are of the view that pay hurdles are set too low. 69% also somewhat or very much agree that executive pay exacerbates income inequality.
- 87% of directors are of the view that proxy advisers have too much influence in this area, and 78% believe compensation consultants wield too much influence.
- On the issue of non-financial metrics, most directors do not support the inclusion of diversity and inclusion targets. However, support for the inclusion of other non-financial metrics is stronger. For example: 72% of directors agree that executive compensation should be linked to customer satisfaction.

Board diversity

Board gender diversity

- Overall, directors consider that gender diverse boards have a number of benefits. Fore example,
  - 83% of directors consider that gender diversity enhances board performance and 72% consider that it enhances company performance
  - 85% of directors consider that increased board gender diversity improves relationships with investors
  - 95% of directors consider that gender diversity brings unique perspectives
- Despite the high level of individual director support for increased gender diversity on boards, progress remains slow (in 2019, women held 26% of S&P 500 seats). The report found that perspectives on the reasons for this were gendered: 44% of female directors consider that board leadership is not invested in diversifying (as compared with 20% of their male peers) and 32% of female directors consider that the CEO is not committed to the issue (versus 9% of their male peers).
- The report suggests that the pressures of the current environment may mean boards lose focus on this and other key issues and suggests that leaders instead take the opportunity to reassess their approach. Boards should 'take a bold step and invest in real change on the board' the report suggests.

Increased racial diversity

- The report found that most directors (84%) agree that companies should be doing more to support/promote racial diversity in the workplace overall.
- Support for increased diversity in the board room was more muted. Only 34% of directors consider racial diversity on their board to be 'very important'.
- Support for linking achievement of diversity targets to executive compensation is not heavily supported with only 39% of directors agreeing that diversity and inclusion goals should be included in executive compensation plans.

Skills/knowledge diversity

- The report found that directors continue to place high value on financial, operational, and risk management expertise. However, boards appear to be placing less emphasis than they have done in the past, on the value of specific areas of expertise/skills/knowledge in other areas. For example, in 2019, 37% of directors indicated that they consider IT expertise to be 'very important' on the board. In 2020, this had fallen to 23%.

- The report suggest that this shift may be attributable to the 'blurring of lines between industries, and the sense that most directors have broad experience. In addition, as boards focus more on diversity and the value of having the right mix of voices, people, and opinions, particular types expertise may be less important'.

Succession planning and board refreshment

The report found that though many individual directors would support changes on their own boards, boards are slow to change.

- Almost half of individual directors see a need for immediate change on their own board: According to the report, for the second consecutive year, 49% of directors consider that at least one of their fellow directors should be replaced and 22% consider that two or more of their fellow directors should be replaced.
- The report found that succession planning is not a priority for boards and that many board members have no input into, or visibility around, what succession planning occurs, despite the fact that it is a key concern for investors. For example: 10% of directors are on boards with no succession plan; 33% indicate that what plans there are of an 'ad hoc' nature; and only 49% of boards that have a succession plan in place share it with the whole board.
- Barriers to board refreshment? Directors consider that unwillingness to have 'difficult conversations' with underperforming directors (20% of respondents) and ineffective performance assessment processes (19% of respondents) are key barriers to board refreshment. 25% of directors overall consider that leadership if 'not very' or 'not at all' effective in this context.

Board performance assessments

- Approach to board performance assessments: More boards than previously are making changes in response to issues identified through the board assessment process. Where only 50% of boards took action as a result of board assessment processes in 2014, 72% of boards now do so.
- The most common response is to add additional expertise: 40% of directors indicated that their boards have added additional expertise as a result of assessment processes (an uptick of 29% on 2014).
- Boards are less willing deal with underperforming peers: The proportion of boards electing not to renominate a director because of poor performance has barely shifted since 2014 at 12% (up from 9%). Only 14% of boards provide 'counsel' to underperforming directors (down from 16%).

Willingness to voice dissenting views

- 36% of directors indicated that it is 'hard to voice' a dissenting opinion in the boardroom.
- Two key reasons for this are:
  - a desire to maintain a collegial atmosphere: 52% of directors indicate that they hold back from voicing dissenting views on this basis
  - 32% of directors indicate that it is because of 'dominant personalities in the boardroom'

Crisis planning and management

- 28% of directors indicated that their took no steps at all before the economic downturn hit, to prepare for it.
- 37% of directors indicated that their board has a strong understanding of their company's crisis management plan.
- Despite this, 99% of directors consider that their companies did a good or excellent job of dealing with interruptions in internal operations due to COVID-19. A high proportion (96%) consider management teams dealing with supply chain interruptions did a good or excellent job.
- The report suggests that this could point to over-confidence, and possible complacency going forward and suggests that there is a need for boards to sharpen their focus going forward.

[Sources: Harvard Law School Forum on Corporate Governance and Financial Regulation 01/11/2020; Full text report: PwC's 2020 Annual Corporate Directors Survey]

Diversity

Investors call on Russell 3000 boards to disclose diversity data

Key Takeouts

- A group of investors, led by the Illinois state treasurer, have written to Russell 3000 companies urging them to consider disclosing the racial/ethnic and gender diversity of their boards in their annual 2021 proxy statements.
- The letter includes an example of the way in which investors would like to see companies disclose this information.
- The letter advises that many members will consider taking voting action if companies fail to act.

A group of 22 investors led by Illinois State Treasurer, representing over $3 trillion in assets under management and advisement, have written to Russell 3000 companies calling on them to disclose the racial, ethnic and gender diversity of their board members in their 2021 annual proxy statements.

This is part of the Russell 3000 Board Diversity Disclosure Initiative launched in 2020, which is pushing for all Russell 3000 companies to voluntarily and publicly disclose board diversity information in light of the correlation between board diversity and long-term performance. The initiative is also part of a broader investor alliance promoting more diverse boards, including the Midwest Investors' Diversity Initiative, the Northeast Investors' Diversity Initiative, and The Thirty Percent Coalition.

The group includes: Connecticut State Treasurer Shawn Wooden (Co-Chair), Pennsylvania State Treasurer Oregon State Treasurer, Vermont State Treasurer, New York City Comptroller, Minnesota State Board of Investment, Illinois State Board of Investment, Chicago City Treasurer, Seattle City Employees' Retirement System, Boston Trust Walden, UAW Retiree Medical Benefits Trust, SEIU Master Trust, Segal Marco Advisors, Marquette Associates, Meketa Investment Group, Wespath Benefits and Investments, Trillium Asset Management, Pax World Funds, CtW Investment Group, and JUST Capital.

Rationale

Illinois State Treasurer Michael Frerichs said that investors are seeking the information because they believe that diverse boards will deliver greater value to shareholders – it 'will lead to more informed long-term strategies and greater valuations for shareholders'.

Mr Frerichs commented

> 'Insular corporate boards make too many decisions in an echo chamber and miss opportunities for growth and leadership. Providing racial, ethnic and gender disclosure will allow institutional investors to identify strategic weaknesses that inhibit growth and provide specific guidance to maximize shareholder value.'

Example of what investors would like to see

The letter includes an example of what investors would like to see in the form of a 'model disclosure' – the board matrix at p19 of the Proxy Statement of Crown Castle International.

Possible voting action

The letter advises companies that 'many' of this group are 'examining policies to vote against boards with no reported racial/ethnic diversity as well as expanding more direct shareholder engagement with companies that fail to disclose'.

[Sources: Illinois State Treasurer media release 28/10/2020; Letter; Example 'model' disclosure: Proxy Statement of Crown Castle International]

Should we consider imposing gender targets?

Fidelity Australian Opportunities Fund Portfolio Manager Kate Howitt has outlined the case for the imposition of hard gender targets or quotas to increase female representation in Australian companies. Ms Howitt gives three main reasons

1. 'Diversity capability' brings better results/better returns – that is, research indicates that adding women and other 'diverse thinkers' to all male teams means better decision making and better results/outcomes.
2. Equity and equality in terms of access to roles is the second argument Ms Howitt puts forward. 'Gender diversity is not about women getting access to the good jobs - it's about opening up all roles to all qualified candidates' she states.
3. Hard targets are known to be effective: The final argument Ms Howitt puts forward is that imposing hard requirements on companies is the most effective way to drive change and overcome barriers to doing so. Likening the challenge of increasing the number of women in companies to the 'safety revolution' in workplaces, Ms Howitt argues that if a hard requirement were put in place, then companies would find a way to comply and do so 'efficiently and without sacrificing other outcomes'.

Ms Howitt concludes that change is difficult, but ultimately is possible and that the debate needs to move past excuses. She writes,

> 'It will be hard and it will require creative approaches. But this is what senior managers get paid for: innovation and managing hard trade-offs, not just continuing with the easy options that were good enough in the past'.
>
> [Source: Fidelity media release 21/10/2020]

Disclosure and Reporting

Top Story | A 'roadmap for improvement': Key takeaways from TCFD's third status report

The TCFD's third status report welcomes the fact that adoption of the TCFD recommendations is on the road to becoming mainstream, but the report also makes clear that significant challenges remain.

Key Takeouts

- The TCFD's latest status report tracking progress toward the alignment of company disclosures with the TCFD recommendations has identified a significant increase in support for/adoption of the recommendations. The report makes clear that though this is a welcome development, significant challnges remain.
- The effectiveness of disclosure from a user perspective is highlighted as a key challenge/improvement area. The report identifies examples of the specific types of climate-related information that 'expert users' would find most useful in decision making and gives examples. The TCFD suggests that the these insights could be used as a 'roadmap' by preparers to improve their reporting going forward.
- Another challenge highlighted in the report is the need for more standardisation of reporting requirements, to meet the demand for more consistency/comparability in reporting and to 'minimise the burden for reporting companies'.
- Additional guidance: The TCFD has released additional guidance to support implementation of the TCFD recommendations.
- Consultation launched: Separately, the TCFD is consulting on proposed forward-looking climate metrics for financial firms.

Overview

The Task Force on Climate-related Financial Disclosures (TCFD) has released its third status report tracking companies' progress toward aligning their disclosure with the TCFD recommendations.

The report provides an overview of current disclosure practices and the extent to which they align with the TCFD recommendations, identifies the 'top implementation issues' and outlines what climate-related information 'expert users' are looking for to assist them in their decision making.

A key message is that though global adoption and support for the recommendations has significantly accelerated since the release of the last report and looks set to continue, challenges remain. A key challenge is ensuring that reporting is effective from a user perspective, especially in light of the demand for greater consistency and comparability in reporting.

Commenting on this, TCFD Chair Michael R Bloomberg said,

> 'Going forward, it will be important to bring more standardisation to reporting requirements across different countries and jurisdictions, in order to minimise the burden for reporting companies and maximize the value of disclosure for investors'.

Mr Bloomberg suggests that global efforts to recover from the economic damage of the COVID-19 pandemic offers an opportunity to progress solutions to these challenges.

Some Key Takeaways

On the way to becoming mainstream

The report found that support for the recommendations has gained significant momentum globally since the release of the last report, a trend which the TCFD welcomes and hopes to see continue going forward.

- There has been an 85% uptick (almost 700 organisations) in the number of organisations supporting the TCFD recommendations since the release of the last report.
- Nearly 60% of the world's 100 largest public companies now support and/or report in line with the TCFD recommendations.
- This is matched, the report comments, by increased investor demand for TCFD disclosure and growing regulatory pressure. According to the report, over 110 regulators and governmental entities globally support the TCFD recommendations as do central banks and supervisors through the Network for Greening the Financial System.
- The report found that asset manager and asset owner reporting to their clients and beneficiaries 'is likely insufficient'. The report states that,

  > 'While TCFD-aligned reporting by a sample of asset managers and asset owners increased over the past three years, the Task Force believes reporting by these organisations to their clients and beneficiaries may not be sufficient and that more progress may be needed to ensure clients and beneficiaries have the right information to make financial decisions'.

Providing decision-useful climate-related information: Where companies should focus their efforts

Though disclosure of climate-related financial information has increased since 2017 and progress has been made both in terms of the number of companies reporting the quality of reporting, the report makes clear that improvement is urgently needed.

Part B of the report (p27) outlines what specific types of climate-related information investors, lenders, and others (the report refers to this group collectively as expert users) find the most useful for decision making.

The top three most useful disclosure elements from a user perspective

Expert users ranked disclosure of: 1) information about how climate related issues have affected business and strategy; 2) 'key metrics on climate related issues for most recent period and historical periods'; and 3) 'the material climate-related issues identified for each sector and geography' as the top most useful climate-related information from a decision making perspective.

The TCFD suggests that companies may find this information helpful in the context of approaching their reporting going forward.

The graphic at p31 of the report ranks the 'top ten' most useful disclosure elements from most-useful to less-useful.

TCFD Initiatives to Support Implementation

- Additional guidance released: At the same time as releasing the report, the TCFD also issued additional guidance - Task Force on Climate-related Financial Disclosures Guidance on Scenario Analysis for Non-Financial Companies; and Task Force on Climate-related Financial Disclosures Guidance on Risk Management Integration and Disclosure – to assist organisations in implementing the recommendations.

- **Consultation on proposed forward-looking climate metrics for financial firms:** The TCFD has also issued a consultation paper seeking feedback on proposed forward-looking climate metrics for financial firms. The deadline for submissions is 27 January 2021.

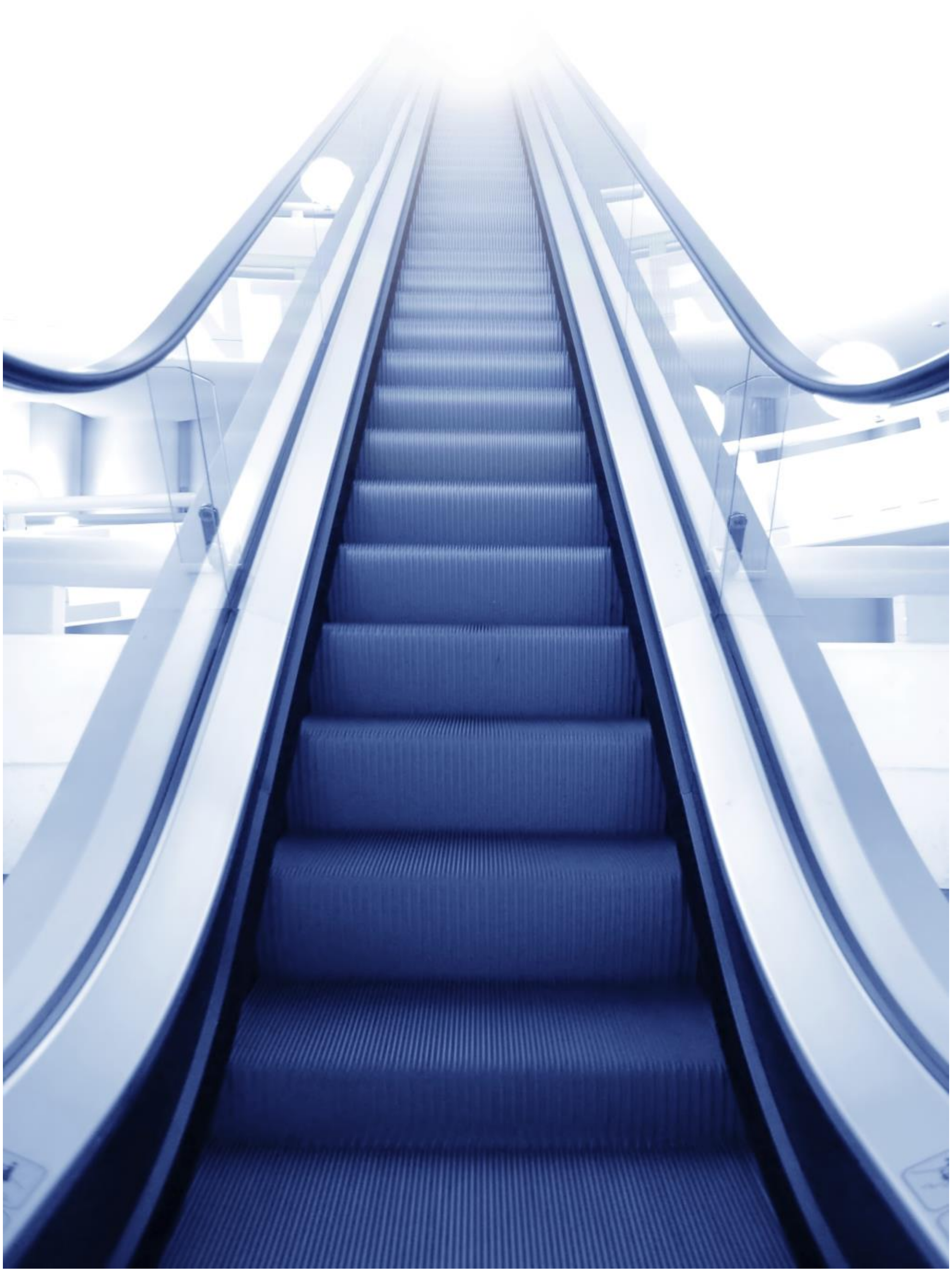
[Sources: TCFD media release 29/10/2020; 2020 Status Report: Task Force on Climate-related Financial Disclosures]

Sustainability reporting continues to increase: 65% of Russell 1000 companies published sustainability reports in 2019

Research from the Governance and Accountability Institute (G&A Institute) tracking sustainability disclosure at companies in the Russell 1000 index has identified that the proportion of companies reporting on sustainability issues utilising the GRI, SASB, and TCFD, and the CDP reporting questionnaire continues to increase.

Some Interesting Findings

The largest companies are leading the way



- Looking at larger companies (S&P 500 companies), the proportion of companies reporting on sustainability issues has steadily increased over time, from 20% of companies reporting in 2011 to 86% in 2018 to 90% in 2019.
- Looking at companies in the Russell 1000 index, 65% of the companies published sustainability reports in 2019 (up from 60% in 2018).
- Of this group, larger companies are more likely than smaller companies to report and the proportion of companies reporting in some sectors is higher than in others. For example, 100% of companies in the utilities sector published sustainability reports, but only 59% of companies in the communications sector did so.
- The number of companies publishing reports in the smaller 500 companies by market cap has also increased year on year, with 39% publishing reports in 2019 (up from 34% in 2018).

Most popular reporting frameworks:

- GRI Standards: The GRI Standards were the most commonly used reporting framework, with 47% of the reporting companies utilising them.
- CDP questionnaire: 41% of companies reported through the CDP (formerly the Climate Disclosure Project) questionnaire (which the report comments closely aligns with the TCFD recommendations).
- SDGs: 32% of the reporting companies reported alignments with the SDGs. The most popular SDGs in the Russell 1000, ranked from most popular to least popular overall are: 1) SDG 8 (decent work and economic growth); 2) SDG 13 (climate action); 3) SDG 12 (responsible consumption and production); 4) SDG 5 (gender equality); and 5) SDG 7 (affordable and clean energy). Page 17 of the report includes a heatmap showing which sectors have the strongest alignments with specific SDGs.
- SASB standards: 23% of reports overall in some way referenced (11%) or aligned with (12%) the SASB standards. The report suggests that the number of companies aligning their reporting with the SASB going forward is likely to increase as the G&A Institute considers that mention of the SASB 'is a good indicator of possible future SASB reports being published'.
- TCFD Recommendations:
  - Only 4% of Russell 1000 companies reported in alignment with the TCFD Recommendations. A further 10% mentioned the recommendations in their reports.
  - Larger companies are more likely than smaller companies to do so.
  - The G&A Institute suggests that the mention of the recommendations in reports may signal that the companies in question will 'improve their disclosures in the coming years and advance to full alignment'.
- External Assurance: 24% of Russel 1000 companies are now seeking external assurance of their sustainability reports.

Trend for increased disclosure looks set to continue?

The G&A Institute predicts that the trend for increased disclosure overall is likely to continue in 2020 reports, despite the pandemic, in light of both: a) pressure from BlackRock and State Street Global Advisors on companies to use the SASB standards in their reporting; and b) pressure from investors to adopt the TCFD recommendations.

[Sources: Governance and Accountability Institute media release 26/10/2020; [registration required] Full text report: G&A Institute Russell 1000 Research Report]

Institutional Investors and Stewardship

BlackRock is pushing for the establishment of global sustainability standards

Key Takeouts

- BlackRock has expressed support for a recent proposal from the IFRS Foundation, proposing to establish a sustainability standards board to contribute (with the IASB) to the development of global sustainability standards
- BlackRock makes clear, that until global sustainability standards are developed, its expectation is that companies will continue to work towards improving the quality of their reporting under existing standards/frameworks and that BlackRock will continue to advocate TCFD and SASB-aligned reporting until a global standard is established.
- BlackRock's latest stewardship report points to a substantial uptick in the number of organisations aligning their disclosure the Sustainability Accounting Standards Board (SASB) standards and the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, following BlackRock's calls for companies to do so in January of this year.

Context

On 30 September, the International Financial Reporting Standards (IFRS) Foundation released a consultation paper seeking feedback on the strength of demand for global sustainability standards and also on whether the IFRS Foundation should play a role in developing them.

Among other proposals, the Foundation is seeking feedback on a proposal that it establish a new sustainability standards board which would operate alongside the International Accounting Standards Board (IASB) and 'build on existing developments and collaborate with other bodies and initiatives in sustainability, focusing initially on climate-related matters'. The deadline for submissions is 31 December 2020.

BlackRock supports the IFRS proposal

Ahead of making a formal submission to the consultation, BlackRockhas released a statement, and flagged in its Q3 2020 Stewardship Report, its support for the IFRS' proposal.

> 'BlackRock strongly advocates for convergence of the different private sector reporting frameworks and standards to establish a globally recognized and adopted approach to sustainability reporting. We see the approach proposed by the IFRS Foundation as the most practicable and likely to succeed. We believe a combination of the best ideas would minimise the reporting burden on companies and achieve the optimal results for users of company reporting on sustainability'.

Progress in sustainability reporting should continue

In light of the fact that it will take time to develop a global standard for sustainability reporting, BlackRock considers that companies should continue to focus on improving the quality of their reporting under existing standards and frameworks. BlackRock states,

> 'It may take some time to achieve the objective of a global sustainability reporting framework and supporting standards. Nonetheless, there is enough substantive guidance, including from the international reporting and auditing bodies, to support significant progress in the number of companies reporting and the quality and consistency of the information they disclose. BlackRock will continue to advocate for TCFD and SASB-aligned reporting until a global standard is established. Progress will help investors like BlackRock better understand a company's approach to enterprise value creation and, in turn, more effectively allocate capital across our investment universe to align with delivering the long-term sustainable financial returns on which our clients depend'.

Some Key Takeaways from BlackRock's Q3 Stewardship Report

Uptick in TCFD and SASB adoption

BlackRock has welcomed the substantial uptick in the number of organisations aligning their disclosure with the Sustainability Accounting Standards Board (SASB) standards and the Task Force on Climate-related Financial Disclosures (TCFD) recommendations, following BlackRock's calls for companies to do so in January of this year.

According to the report, by the end of Q3 2020:

- 403 companies globally had reported SASB metrics, 232 (58%) were US based and 171 (42%) based outside the US. This is a fivefold increase on the number of SASB reporters for Q3 2019 (80 companies).
- Likewise, 1400 organisations globally representing a market capitalisation of over $12.6 trillion (Sept. 2020) support the TCFD recommendations.

BlackRock comments that though this is 'encouraging' a key barrier to increased adoption is the lack of a standardised approach to reporting and that this is a factor in BlackRock's decision to support the IFRS Foundation's proposal.

BlackRock has significantly stepped up engagement efforts, including engagement on environmental issues despite the pandemic

BlackRock also highlights the extent to which it has stepped up its engagement efforts on ESG issues as compared with the same period in 2019, despite the COVID-19 pandemic.

According to the report, BlackRock held 559 engagements in Q3 2020 with 490 companies globally on a range of ESG issues. In the APAC region, BlackRock held 50 more engagements in Q3 2020 (176) as compared with the same period in 2019 (12).

In particular, the report flags that the number of engagements on environmental issues increased 238% on the same period in 2019.

BlackRock comments that despite the need for companies to focus on managing their response to the COVID-19 pandemic, they generally have maintained their focus on longer term climate risks/opportunities. The report states,

> 'We noticed that although management teams and boards are naturally spending a considerable amount of time, effort, and resources to respond to the COVID-19 pandemic and various social issues, they remain focused on long-term climate risks and opportunities and the transition to a low-carbon economy'

[Sources: IFRS Media release 30/09/2020; IFRS consultation paper; BlackRock statement: Sustainability Reporting: Convergence to accelerate progress; Q3 Global BlackRock Investment Stewardship (BIS) report; BlackRock media release 29/10/2020]

UK National Standards Body releases a new sustainable finance standard for investment managers

UK National Standards Body the BSI has released, in collaboration with the Department for Business, Energy and Industrial Strategy (BEIS) and the UK financial services industry, a new sustainable finance standard for investment managers: PAS 7341:2020, Responsible and sustainable investment management – Specification.

BSI states that the purpose of the new standard is to 'help investment managers put the principles set out in PAS 7340 into practice enabling them to demonstrate how they're implementing responsible investment management across their organization and asset classes.'

The new standard outlines the 'requirements to establish, implement and manage the process of integrating responsible and sustainable considerations into investment management' with an emphasis on transparency.

Announcing the release of the standard BSI Director of Standards Scott Steedman commented,

> 'The financial system is playing a crucial role in helping to rebuild a more sustainable future through responsible economic growth. This is the first consensus for delivering responsible investment management at corporate level. The new standard, called PAS 7341, creates a way for financial management organisations to transition from 'responsible' to 'sustainable' investment management.'

Minister of State for Business, Energy and Clean Growth added that the release of the new standard builds on the 'Green Finance Strategy' as the UK 'strive to lead the world in tackling climate change'.

[Sources: BSI media release 28/10/2020; 28/10/2020]

Shareholder Activism

Activist governance push at Twitter: Review recommends that the existing classified structure be dismantled and annual director elections be instituted

Context

In line with the terms of a cooperation agreement reached with Elliott Management and Silver Lake earlier in the year, Twitter agreed (among other things) to form an independent committee to evaluate Twitter's existing leadership, board structure and CEO succession plan. The Committee was tasked with reporting its recommendations to the board by the end of the year, and Twitter agreed to make the recommendations public. The Committee was chaired by Twitter's Independent Chair Patrick Pichett and members included independent directors Jesse Cohn (Elliott partner) and Egon Durban (Co-CEO and Managing Partner of Silver Lake).

Review recommendations

The Committee has recommended (and Twitter's board has accepted) the following three recommendations.

- **Eliminate the existing classified board structure and institute annual director elections:** The Committee recommended that Twitter put a resolution to shareholders at the 2011 AGM to amend Twitter's Certificate of Incorporation and Bylaws to eliminate the existing classified board structure and institute annual director elections. The Committee recommended that serving directors who have multiple-year terms will continue to serve those terms until they expire.
- **No change to the existing management structure:** The Committee 'expressed its confidence in management and recommended that the current structure remain in place'.
- **Approval of 'updated' CEO succession plan:** The Committee said that the CEO's succession plan has been updated 'in line with best practices' and that the nominating and corporate governance committee would continue to oversee it. Twitter's statement gives no further details except to state that the 'Board will continue to evaluate Company and management performance according to a range of factors, including the Company's operating plan and established milestones'.

Media reports have commented (WSJ, AFR) have characterised the review as a referendum on Twitter CEO Jack Dorsey's continued leadership of the company (Mr Dorsey is also CEO and Chair of Square Inc).

[Sources: Twitter SEC filing 02/11/2020; [registration required] The WSJ 02/11/2020; [registeation rwequierd] The AFR 03/11/2020]

In Brief | Market forces has confirmed it will push ahead with its shareholder climate resolution at ANZ (despite the bank's latest climate commitments) on the basis that they don't go far enough

[Source Market Forces media release 29/10/2020; Market Forces policy analysis 29/10/2020]

Meetings and Proxy Advisers

Consultation deadline extended: The government has extended the deadline for submissions on proposals to make temporary changes to meeting and execution requirements permanent

Context

Following what it considers to be a successful test run of changes to meeting and execution requirements introduced in response to the COVID-19 pandemic, the government recently released draft legislation for a short consultation period proposing to make them permanent. Our summary of key proposed changes is here.

Concerns raised

As flagged, ahead of the original 30 October deadline various groups (ISS, The Australian Shareholders' Association (ASA), Wilson Asset Management and others) publicly voiced concerns about the timing and brevity of the consultation period which occurred in the midst of the AGM season, and about the proposals themselves. In particular, the groups expressed strong opposition to the proposal to permanently allow companies the option to hold virtual (as distinct from hybrid) meetings. Both the ASA and Wilson Asset Management called on retail shareholders to register their opposition by making a submission to the consultation/contacting their MP.

Extension of consultation deadline to 6 November

The AFR reports that the Treasurer has responded to these concerns by extending the time allowed for consultation, and signalling support for enabling 'hybrid' as distinct from virtual meetings.

In an email to subscribers, WAM welcomed the extension and also welcomed what WAM considers to be an endorsement by the Treasurer (in the AFR) of WAM's 'preferred hybrid model for AGMs'. WAM reiterated calls for shareholders to take the opportunity to make submissions to the consultation.

Writing in The Conversation, Professor Ian Ramsay and Research Fellow Lloyd Freeman also welcomed the extension of the consultation deadline on the basis that rushing into such significant reform is unwarranted, especially in light of the emerging evidence that virtual meetings may serve to undermine shareholder interests.

Instead they argue that 'this year's AGM season will give us enough experience with virtual shareholder meetings to allow a more informed decision on their merits during 2021'.

They also welcomed the shift in the focus of the discussion toward the merits of hybrid rather than virtual meetings, suggesting that debating the merits of 'hybrid' rather than virtual meetings would be a better a starting point.

[Sources: The Conversation 03/11/2020; [registration required] The AFR 30/10/2020]

Opposition to the proposal to give companies the option to hold virtual AGMs post-pandemic: Submissions to the consultation

Wilson Asset Management (WAM) and the Stockbrokers and Financial Advisers Association (SAFAA) have each separately published their submissions to the consultation on proposals to make temporary changes to meeting and execution requirements introduced in response to the COVID-19 pandemic permanent.

Wilson Asset Management's submission

Wilson Asset Management's submission expresses support for proposed changes to electronic execution and communication requirements, but consistent with earlier public statements, raises concerns about permanently allowing companies the option to hold meetings entirely virtually on the basis that doing so will negatively impact shareholder rights. Negative consequences listed in the submission include:

- Reduced transparency and accountability as a result of the 'inconsistent, fragmented and uncoordinated' approach taken to shareholder questions. For example, the submission raises concerns that in virtual meetings:
  - questions and comments from shareholders are 'often misconstrued, omitted, rephrased or reinterpreted by a moderator or through a platform' so there is no certainty that questions have been put to the board in 'their truest form'. The submission comments that 'we have experienced our own questions being omitted by boards during a virtual extraordinary general meetings. Ensuring transparency during this process is vital to upholding shareholder trust in company management'.
  - virtual meetings are often 'a one way communication exercise' with moderators, boards and company management in full control time limits and questions. This, it is suggested operates to limit opportunities for shareholders to follow up on questions where they consider it has not been answered/not been answered clearly.
- The in person component of shareholder meetings is of particular importance to retail investors who do not otherwise have access to boards/management for the purposes of holding them directly to account.
- Technology is presently unreliable and there is 'no suitable industry standard to ensure viability'.
- Having shared the proposed changes with its own 90,000 shareholders, it is clear that many shareholders are unaware of the proposed changes, concerned about the brevity of the consultation period and concerned about the proposed impact of the changes.

  [Source: Wilson Asset Management submission 30/10/2020]

Stockbrokers and Financial Advisers Association's submission

Electronic execution: In its submission to the consultation, the Stockbrokers and Financial Advisers Association (SAFAA) expresses support for amendments to the Corporations Act 2001 (Cth) that would enable companies to execute company documents, including deeds, electronically.

The submissions suggests however, that changing the Corporations Act will not provide absolute certainty on the issue.

> …'we note that reluctance to execute deeds electronically could remain in the financial services sector, as there are different laws regarding the use of digital signatures at the state level. In order for the amendment to the Corporations Act for the use of digital signatures to apply on a primary basis, SAFAA notes that every jurisdiction will need to allow for their usage on the same basis. With clients located across the country and many firms with offices in different states, it can be difficult to decide in which jurisdiction to execute a deed. This will play into a degree of reluctance to utilise digital signatures. We note that the Federal Government does not have the capacity to amend state laws and that efforts to harmonise laws tend to be long-term with no guarantee of a successful outcome. SAFAA also notes that there is no regulatory direction as to how records will be kept and managed'.

In consequence, SAFAA takes the view that 'acceptance of digital signatures and record keeping is likely to be tested in the Courts once the amendments have passed'.

Virtual meetings: On the issue of virtual meetings, the SAFAA raises concerns that enabling companies the flexibility to hold meetings in this format will negatively impact retail shareholders' ability to hold boards directly to account. The submission states,

> 'The value of a physical general meeting is that shareholders can 'eyeball' the directors. The planning for an AGM focuses a company's board and executives on its shareholders. It has been said to compel boardroom behaviour… In a physical meeting, the board and management cannot constrain shareholders from asking questions or filter questions from shareholders, as these are heard by all other shareholders during the meeting. However, in a virtual meeting, boards and management can filter questions, choosing to answer only some while ignoring others. I n the 2020 AGM season under the Temporary Determination, shareholders have experienced boards omitting, rephrasing and reinterpreting shareholders' questions in virtual meetings'.

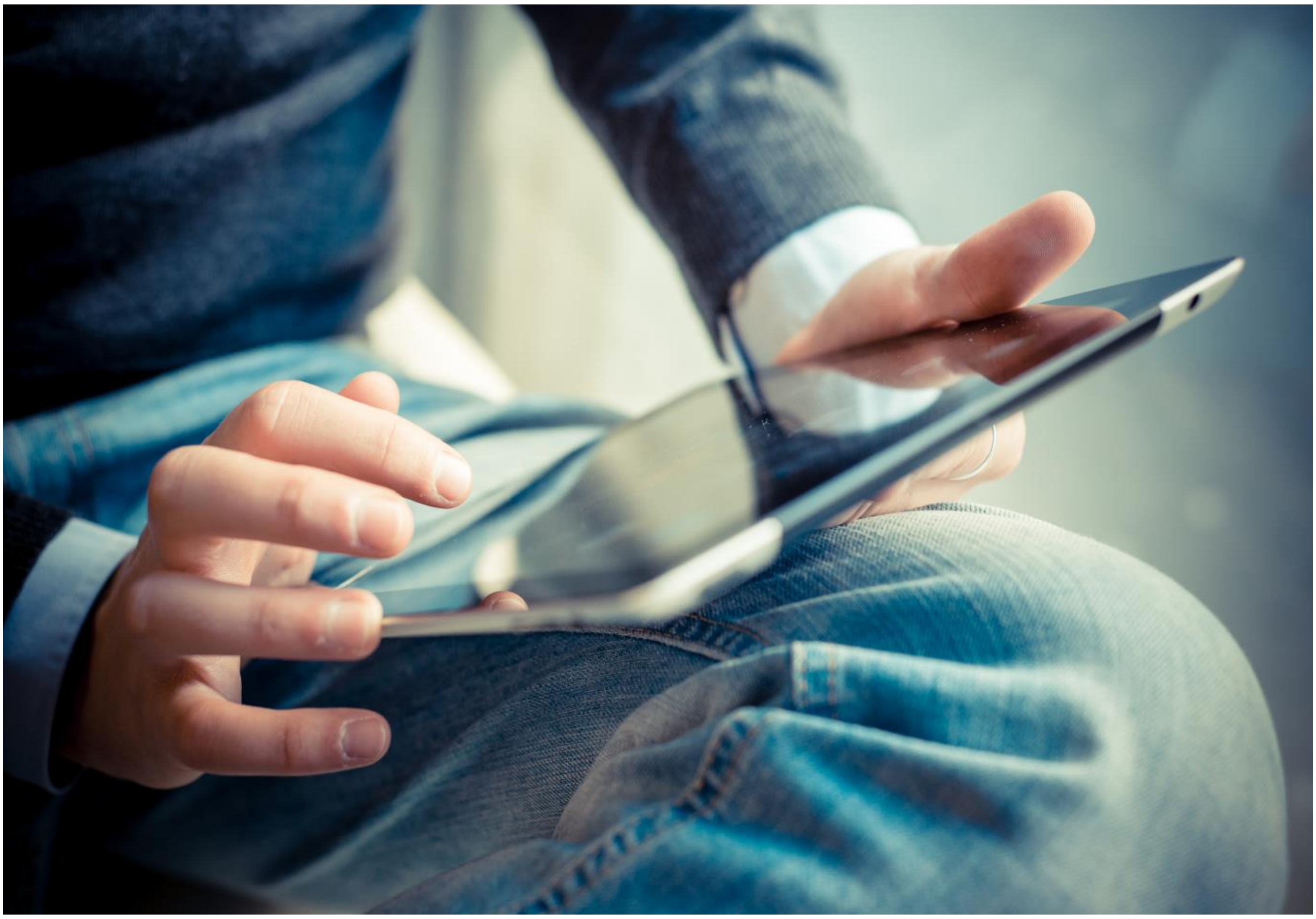
Recommended changes: SAFAA makes two recommended changes to the Bill:

1. A new requirement for directors (in the virtual meeting context) to answer all shareholder questions submitted during the meetings and to be prohibited from omitting/rephrasing/reinterpreting shareholder questions submitted prior to a meeting.
2. The introduction of a new requirement for shareholders to be consulted on the meeting format. '

> 'SAFAA therefore recommends that companies seek input from shareholders as to the format of the general meeting and that companies not be the sole determiner of the format of the general meeting'.

The submission comments in relation to this that shareholder are likely to agree to a virtual meeting where there are 'no contentious issues, but are likely to seek a physical or hybrid meeting where they wish to raise concerns with governance and/or performance'.

[Source: Stockbrokers and Financial Advisers Association submission to the consultation 29/10/2020]



The case for virtual meetings: The Governance Institute outlines why pushing ahead with proposals to modernise outdated requirements makes sense

The Governance Institute of Australia's submission is broadly supportive of the proposed changes to meeting and electronic execution requirements overall, including proposals to allow companies the flexibility to adopt their preferred meeting format. The submission does however, raise concerns about some aspects of the proposed changes.

Virtual meetings

The submission expresses support for the proposal to give companies the option to choose the meeting format most appropriate to their circumstances. The submission states,

> 'From our members' perspective it is key not only to meet their obligation under the Corporations Act to ensure members have a reasonable opportunity to participate in a meeting, but also to ensure that

companies have the ability to adopt a means of holding a meeting that best suits their and their members' circumstances'.

Teething problems

The submission acknowledges that work may be required to 'enhance the virtual meeting experience for all parties' but argues that this is to be expected given the rapidity with which companies needed to adapt to the new format. The submission cautions against stepping back from the proposed flexible approach to address these teething issues. The submissions states,

> 'As is the case with anything new or introduced at short notice, some 2020 AGM experiences may have been reported as having sub optimal or other unintended consequences. However, our members are committed to working collaboratively with all stakeholders to in the first instance, minimise these concerns and then to provide ideas and solutions which enhance the virtual meeting experience for all parties…
>
> 'Our members also caution against "hard wiring" provisions into the Corporations Act to address issues that were more the product of the unprecedented conditions under which AGMs have taken place in 2020'.

The submission argues that the shift to virtual meetings has provided additional opportunities for shareholder participation/attendance because there is no need to travel to attend them. Citing a recent report, the submission observes that member meeting attendance in 2020 increased 36% on 2019 levels.

Commenting on this, Governance Institute CEO Megan Motto observed,

> 'Those running virtual meetings reported increased numbers of attendees, companies better able to engage with shareholders who typically could not attend due to travel, and the digital format was more appealing to the future generation of investors who are "digital natives"'.

Hybrid meetings

On the issue of hybrid meetings, the submission states that 'as a practical matter' companies, based on their recent experience, prefer the virtual meeting format over the 'hybrid format'.

> 'Our members consider that as a practical matter, a hybrid meeting format involves increased logistical complexity as physical and online attendees need to be provided with an equal ability to participate, ask questions and vote during the meeting, and the logistics essentially involve hosting two formats (physical and virtual) with the associated costs of both formats (venue hire, catering and online platform costs). It may be difficult for members to follow proceedings and participate in the meeting as well as harder to manage answering questions and deal with repetitive questions'.

The submission comments that a 'hybrid meeting also doubles the risk profile of an AGM' because holding a hybrid meeting requires the use of 'multiple technologies' to present the live meeting while simultaneously streaming it.

On this basis the Governance Institute supports the approach in the draft legislation, that does not prescribe the format of member meetings.

Concerns

The submission raises concerns and recommends against two proposed changes.

Changes to minute requirements for virtual meetings

The submissions raises concerns about the proposed imposition of different and more stringent minute-taking requirements for virtual meetings.

Specifically, the submission

> 'recommends strongly against the proposed amendment to section 251A (1) to record questions and comments in the minutes of members' meetings. Our members do not support imposing more stringent

requirements for minutes of virtual meetings than for minutes of physical meetings, which meet long-established principles set by the courts'.

New requirement that votes be taken on a poll

The submission also raises concerns about, and recommends against, the proposed introduction of a new requirement that all votes at virtual meetings be taken on a poll (rather than a show of hands).

Specifically, the submission

> 'recommends against amending the Corporations Act to require that all votes at virtual meetings be taken on a poll. Listed companies are required to report on an "if not, why not" basis against the Corporate Governance Principles and Recommendations (Principles and Recommendations) as to whether all substantive resolutions at members' meetings are decided on a poll. Our members consider that there are too many issues with requiring all voting at virtual meetings to be taken on a poll rather than a show of hands, even for smaller companies and that this proposal would in fact disadvantage smaller companies'

The issues referred to include (among others) the additional costs to the company - the cost of technology enabling votes to be taken by a poll.

Proposed changes to electronic communication, execution and witnessing requirements

The submission generally supports proposals to enable electronic execution and witnessing of documents and electronic communication with members about meetings. The submission calls on the government to take the opportunity to make the requirements unequivocally technology neutral and seeks clarification of certain requirements to avoid uncertainty.

On the issue of communicating with shareholders about meetings, the submission states that,

> 'Governance Institute recommends a regime whereby members can opt in to receive either an electronic or hard copy notice of meeting. The legislation should deem companies' members who fail to make an election to have received the materials, subject to the company making the meeting materials: available in the public domain and accessible, using a universal or near-universal channel of communication, and issuing an ASX announcement, if listed, noting that making the meeting materials available on the company's website meets the current definition of a near-universal channel of'.
>
> [Sources: Governance Institute of Australia media release 30/10/2020; Submission]

Markets and Exchanges

In Brief | Further delay to CHESS replacement: In response to industry concerns, ASX has pushed back the go-live date for the CHESS replacement system to April 2023 and increased the scope of the project. ASX CEO Dominic Stevens said that this will mean 'a significantly enhanced CHESS replacement solution on Day 1'

[Source: ASX media release 28/10/2020]

Financial Services

Top Story | LIBOR Transition: what you need to know

LIBOR – the base rate that underpins the global financial markets – will cease in December 2021.

MinterEllison's team has released an article outlining how this affects transactions that directly or indirectly reference LIBOR and what preparations organisations should make ahead of the cut-off.

The article can be accessed on our website here.

COVID-19: So far funds have paid out $34.6 billion under the government's early release of superannuation scheme, the data indicates that the number of applications coming through continues to slow

The Australian Prudential Regulation Authority (APRA) has released industry-level and fund-level data on the early release of superannuation scheme for applications received during the period 20 April (inception of the scheme) to 25 October 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.
- The volume of applications continues to slow: Over the week to 25 October, superannuation funds received 24,000 applications (down from 25,000 applications in the week to 18 October).
- Of the applications received in the week to 25 October, 16,000 were initial applications bringing the total number of initial applications received to date to 3.3 million since inception of the scheme.
- 8,000 applications were repeat applications, bringing the total number of repeat applications to 1.3 million since the inception of the scheme.
- Over the week to 25 October, superannuation funds made payments to 24,000 members worth $173 million.
- Funds have made approximately 4.5 million payments since the inception of the scheme worth a total of $34.6 billion. This figure represents 98% of applications received since inception of the scheme.

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

The ICA has welcomed the release of the final report of the Royal Commission into National Natural Disaster Arrangements

Context

The final report of the Royal Commission into National Natural Disaster Arrangements (Bush Fire Royal Commission) was tabled in parliament on 30 October. It contains 80 recommendations aimed at strengthening Australia's natural disaster arrangements.

The ICA has called for the urgent funding/implementation of 'key recommendations'

The Insurance Council of Australia has welcomed the release of the final report and 'key recommendations aimed at strengthening Australian communities'.

Key recommendations supported by the Insurance Council include:

- 'Establishing a national organisation dedicated to championing resilience across the nation. It would think broadly about all measures necessary to make the country resilient to natural disasters, and plan and respond accordingly. It should focus on reducing long-term disaster risk and harmonising approaches across Australia

- A clear role for governments to educate communities and provide accessible information to help them make informed decision and take appropriate actions to manage disaster risk
- Greater Commonwealth support for State Governments in disaster management
- Improvements in the availability and quality of data to help governments and other stakeholders understand and manage natural disaster risk
- Mandatory consideration of natural disaster risk in land-use planning decisions
- Guidance for insurer-recognised retrofitting and mitigation'.

Insurance Council of Australia CEO Andrew Hall commented,

> 'The Royal Commission's recommendations provide clear and urgent direction to governments and agencies on how they should work cooperatively to protect Australian communities from natural disasters…Key recommendations reflect the ICA's submission.'

Mr Hall expressed the hope that the recommendations will be accepted by the government and that funding/support to implement key recommendations will be made available as an urgent priority. He said,

> 'Many communities need help now for the risks they already face, as well as measures to make sure they can withstand the changing risks caused by climate change. Spending by federal and state governments on projects that prevent or reduce the impact of natural disasters still falls significantly short of the combined $400 million a year that the Productivity Commission recommended in 2014, let alone the $3.5 billion a year that APRA has estimated will need to be spent.'
>
> [Source: ICA media release 30/10/2020]

Travel insurance: Insurer has instituted a remediation program after customers were 'potentially mis-sold' travel insurance

- The Australian Securities and Investments Commission (ASIC) has announced that Allianz Australia Insurance Limited (Allianz) and AWP Australia Pty Ltd trading as Allianz Global Assistance (AWP) has instituted a $10 million remediation program to refund customers who were 'potentially mis-sold' travel insurance via Allianz's own website and those of its distribution partners.
- ASIC raised concerns that travel insurance policies may have been sold to customers who were ineligible to make a claim, that claims may have only been paid in part, and that the price quoted for travel insurance policies on Expedia websites was dearer than the price quoted on the policies sold on a standalone basis.
- Allianz and AWP have taken actions to address ASIC's concerns including: removing 'potentially misleading or deceptive statements from their websites and those of their partners, remediating travel insurance customers whose claims were partially paid; and refunding premiums with interests to customers who had purchased travel insurance from Allianz's website/those of its distribution partners.
- Allianz and AWP's agreement to remediate their customers is not an admission by either Allianz or AWP that they have breached the law.
- ASIC comments that the remediation program is separate from ASIC's civil penalty proceedings against Allianz and AWP for allegedly misleading consumers via the Expedia travel websites.
- ASIC Acting Chair Karen Chester cautioned insurers of the need to make sure information about policies is clear. 'Insurers need to be careful to make sure that they don't mislead consumers into thinking they have insurance cover for something when they don't' Ms Chester said.

  [Source: ASIC media release 30/10/2020]

In Brief | UK Business Interruption Test Case: Supreme Court Appeal will be heard from 16 November

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

In Brief | Treasury Laws Amendment (2020 Measures No 4) Bill 2020 was introduced into the House of Representatives on 28 October and has been referred to the Senate Economics Legislation Committee for report by 26 November. Among other things, the Bill proposes to make transitional amendments related to the replacement of the Superannuation Complaints Tribunal with the Australian Financial Complaints Authority

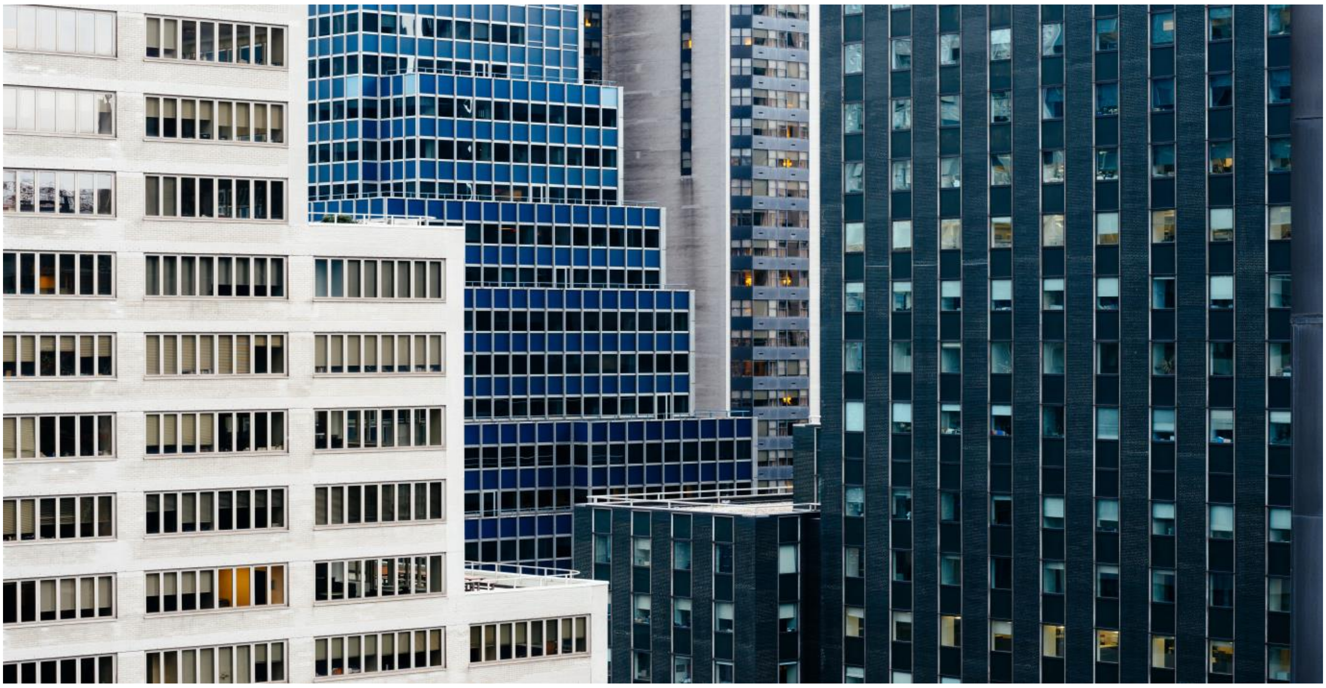
[Source: Treasury Laws Amendment (2020 Measures No 4) Bill 2020]

In Brief | Foreign Investment Reform Bills referred to Committee: The Foreign Investment Reform (Protecting Australia's National Security) Bill 2020 and the Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020 were introduced into the House of Representatives on the 28 October and have been referred to the Senate Economics Legislation Committee for report by 26 November

[Sources: Foreign Investment Reform (Protecting Australia's National Security) Bill 2020; Foreign Acquisitions and Takeovers Fees Imposition Amendment Bill 2020]

In Brief | Hayne Case Study: The Federal Court has ordered a big four bank to pay a $150,000 penalty after finding that the bank failed to take account of a customer's notification that they were a problem gambler and to take reasonable steps to verify the customer's financial situation before offering and approving a credit card limit increase

[Sources: Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 1543; ASIC media release 30/10/2020]



Accounting and Audit

PwC calls for rethink of the timing and scope of certain PJC interim report recommendations in light of COVID-19

Context

The Parliamentary Joint Committee on Corporations and Financial Services Inquiry into the regulation of auditing in Australia released an interim report, earlier in the year, which made ten 'substantive policy recommendations' to raise audit quality standards ahead of the release of the final report on 2 December. You can find out summary here.

Auditor tenure

Recommendation 7 of the interim report recommends the introduction of a new auditor tender regime whereby companies would be required to undertake a public tender process every ten years or, where they do not do so, to provide an explanation to shareholders as to why. The interim report recommended that this new tender processes be implemented by 2022 for any entity that had has had the same auditor for a continuous period of ten years since 2012.

COVID-19 adjustments needed

Given that the recommendations were made before the pandemic, PwC suggests in its latest Transparency Report that it's appropriate to reassess both the timing and scope of certain recommendations, including recommendation 7, to take into account the changed environment.

PwC states,

> 'The possibility of adding regulatory or compliance burden to listed companies in the current environment needs to be balanced against the risk that this could distract management attention away from their focus on business continuity and creating jobs, and could introduce incentives for companies to "stay away" from public markets'.

Page 13 of the report provides a brief overview of how PwC is approaching each of the recommendations.

Commenting on the implementation of recommendation 7 specifically, PwC raises concerns that the

> …'recommendation has the potential to be interpreted by the market as mandatory rotation or tendering. This would see a significant amount of audit tenders being released in a short period of time (something the industry would struggle to cope with), add additional compliance burden for companies and would significantly divert the focus of auditors away from audit quality at their existing clients ,at a time when COVID-19 has resulted in an even higher level of complexity and need for senior judgement'.

PwC suggests that concerns about long auditor tenure might better be addressed by following Canada's example.

> 'Establishing an approach and guiding framework for reviewing in detail the quality and independence of their auditors every five years would enhance the current Australian corporate governance framework. This model has been implemented in Canada and has balanced framing decisions regarding tenure with an overarching commitment to achieving high audit quality. When combined with existing five year partner rotation requirements and natural turnover of CEOs, CFOs and Audit Committee Chairs, this continuous review approach mitigates the threat of familiarity, without an extra compliance burden for business, particularly in a COVID-19 environment'.
>
> [Source: PwC transparency report hear ended 30 June 2020]

Risk Management

Climate Risk

Top Story | Are Australian companies facing a watershed on climate change?

MinterEllison's Climate Risk Governance Team reflects on the step change in emissions reduction expectations being driven by banks and superannuation funds and the probably implications for other Australian companies.

Ultimately, the conclusion drawn is that Australian companies are likely to come under increasing pressure to accelerate their climate risk governance ambitions to ensure continued access to competitive finance and insurance. It's suggested that those that are able to demonstrate strategic alignment with the Paris Agreement will benefit from the growth in green finance markets, from transition bonds to sustainability-linked loans.

The full text of the article can be accessed on our website here.

Climate change litigation: Australian super fund settles climate action brought by member and acknowledges that climate risk is 'a material, direct and current financial risk'

The Retail Employees Superannuation Trust (REST) has announced that it has reached agreement with fund member Mark McVeigh, to settle legal proceedings brought by him in connection with the fund's handling of climate-related financial risk.

Broadly, Mr McVeigh alleged that the fund:

- breached its obligations the Corporations Act by failing to provide him as a member with sufficiently detailed information about the steps it was taking to manage climate-related financial risks
- breached its obligations under the Superannuation Industry (Supervision) Act and its duties as a trustee when investing his money.

A copy of the amended concise statement (the most recent version) outlining the allegations against the fund in more detail is here.

Settlement

In a statement, REST acknowledged that,

> 'Climate change is a material, direct and current financial risk to the superannuation fund across many risk categories, including investment, market, reputational, strategic, governance and third-party risks'.

In light of this the fund has committed to:

- taking active steps to establish the necessary systems, policies and processes to ensure that climate-related financial risks are 'appropriately mitigated and managed, having regard to the goals of the Paris Agreement and other international efforts to limit climate change'.
- ensuring that investment managers 'take active steps to consider, measure and manage financial risks posed by climate change and other relevant ESG risks' and to require that investment managers report back on their efforts. Where necessary, REST states that it will 'take steps to improve, the compliance of its investment managers'.
- disclosing material climate-related financial risks and reporting on the systems, policies and procedures maintained by the trustee to address them.

REST also committed to a range of other measures, also 'supported by' Mr McVeigh. These include:

- Achieving a net zero carbon footprint for the fund by 2050
- Committing to 'measure, monitoring and reporting outcomes on its climate related progress and actions' in line with the TCFD recommendations
- Encouraging the companies in which it invests to report in line with the TCFD recommendations
- Publicly disclosing its portfolio holdings
- Undertaking scenario analysis (including a 'well below 2 degree scenario') as a means to enhancing the consideration given to climate change risks in the context of setting investment strategy and asset allocation positions
- Undertaking to actively consider all shareholder climate change related resolutions
- Engaging with companies and industry association to promote business plans/government policies in line with the goals of the Paris Agreement
- Conducting due diligence and monitoring of investment managers and their approach to climate risk;
- Revising its climate change policy and internal risk framework in light of these commitments
- Committing to 'seek to require that its investment managers and advisers comply with the above'.

Broader significance

Equity Generation Lawyers who represented Mr McVeigh have suggested that despite not proceeding to trial, the case has international significance for the way in which pension funds and sovereign wealth funds globally as well as in Australia, manage climate risk.

[Sources: REST media release 02/11/2020; Equity Generation Lawyers media release 02/11/2020]

Columbia's Millstein Center has released a global investor-director survey on climate risk management

Key Takeouts

- Columbia's Millstein Center for Global Markets and Corporate Ownership, with LeaderXXchange have released the results of a global survey looking into the extent to which climate risk related issues are actually influencing investment and boardroom decisions. The Millstein Center states that the research is the first global survey of its kind.
- The report found among other things that: a) the majority of investors and directors view climate risk as a 'material risk'; b) the majority of both directors and investors view climate risk reporting to be equally as important as financial reporting; and c) the TCFD recommendations are gaining traction among investors with more than 50% of investor respondents in both North America and Europe already pushing companies to adopt them.

Columbia's Millstein Center for Global Markets and Corporate Ownership, with LeaderXXchange have released the results of a global survey into the extent to which on the one hand, institutional investors incorporate climate related issues into their investment decision making, and on the other, how directors incorporate climate-related issues into their oversight responsibilities in practice.

The survey collected data from 130 respondents (approximately 40% directors and 60% investors) from Europe (including UK) and North America on a broad range of topics including: a) the materiality of climate change issues; b) the extent of training on climate change issues; c) disclosure of climate risk; d) climate risk management and board oversight; and e) engagement and proxy voting on climate-related issues.

Some Interesting Findings

Climate-change related risk as a material risk

Most directors and investors view climate change issues as a 'material' risk.

- The survey found that more than 60% of directors and 70% of investors consider that climate risk is already impacting their business today. The report suggests that this indicates that a majority of both groups view climate risk to be a 'material' risk.
- The three top reasons for incorporating climate risk into strategy and investment decision making were identified by respondents as: 1) helpful in identifying business and investment opportunities; 2) helpful in managing risk; and 3) because is it 'the right thing to do'.

Developing expertise on climate related risks

Investors and directors obtain their knowledge and expertise about climate change/climate risk through both internal and external sources.

- A majority of both investors and directors developed expertise on climate change by following current events and news reports in the media, reviewing publications by scientists and think tanks, and reading company CSR or annual reports.
- Investors were more likely than directors nominate sell-side reports and reports from ESG rating agencies as their preferred source of information.
- Investors were also more likely than directors to nominate internal training organised by their investment firm and/or external training as a source of information.

Views on climate disclosure

- Overall, the majority of both directors and investors view climate risk reporting to be equally as important as financial reporting.
- Investors tend to place more value on climate disclosure than directors and are 'less receptive to boilerplate climate change disclosure'. Instead, investors would like to see companies providing tailored information explaining why climate change is material to the particular company and how, and to what extent, it is impacting business operations.
- The TCFD (Task Force on Climate-related Financial Disclosures) recommendations are gaining traction among investors with more than 50% of investor respondents in both North America and Europe already pushing companies to adopt them.

Directors views on oversight and engagement

- More than 40% of director respondents indicated that climate related topics are discussed annually by their board and 30% said they are discussed quarterly.
- 30% of director respondents indicated that there is a need for boards to have a non-executive director with climate expertise.
- The report found that overall boards tend to receive climate-related information primarily from the head of CSR/Sustainability or, to a lesser extent from the General Counsel/Corporate Secretary. According to the report, climate-related information 'almost never' comes through to the board from Investor Relations.
- Approximately a quarter of directors indicated that 'no one' reports to the board on climate-related topics.
- According to director respondents, investor engagement on climate-related issues takes place primarily at the CEO level and Investor Relations level. More than 20% of directors indicate that engagement also takes place at the board level, mainly with the lead independent director.

Investor views on stewardship

- Almost 65% of investor respondents indicated they engage directly with board directors.
- Investors indicated that engagement with companies on climate topics is increasingly done not only by ESG or investor engagement specialists, but also by mainstream portfolio managers and analysts.
- The Chief Investment Officers of asset managers and asset owners (such as pension funds) have begun to engage companies. The report suggests that this is an indicator of the importance of climate related topics for the investment industry.
- The primary modes of engagement on climate are: a) engaging directly with management; b) submitting or supporting shareholder proposals and/or voting against management, and c) engaging board directors in a dialogue.

[Sources: Columbia Law School Blog 30/10/2020; Full text report: Global Investor-Director Survey on Climate Risk Management]

In Brief | Doing nothing on climate is more costly than the alternative: Deloitte report finds that failure to act on climate change now could cost the Australian economy $3.4 trillion by 2070 where as taking action would add $680 billion to the economy over the same time period

[Source: Deloitte Access Economics report: A new choice Australia's climate for growth]

Privacy, Cybersecurity and Technology

The government has released the terms of reference for a 'wide ranging review' of the Privacy Act

The government has released the terms of reference for a 'wide-ranging review' of the Privacy Act 1988 (Cth) (Privacy Act) which will be undertaken by the Attorney General's department.

The review will consider 'whether the scope and enforcement mechanisms in the Privacy Act 1988 remain fit for purpose and, if needed, consider options for reform'.

In particular, the review will consider a number of recommendations put forward by the 2019 Australian Competition and Consumer Commission's (ACCC) Digital Platforms Inquiry which the government has already agreed to in principle such as expanding the scope of the Privacy Act to cover technical data and other online identifiers and strengthening privacy notice and consent requirements.

Details: Terms of Reference

The review will consider:

- 'the scope and application of the Privacy Act

- whether the Privacy Act effectively protects personal information and provides a practical and proportionate framework for promoting good privacy practices
- whether individuals should have direct rights of action to enforce privacy obligations under the Privacy Act
- whether a statutory tort for serious invasions of privacy should be introduced into Australian law
- the impact of the notifiable data breach scheme and its effectiveness in meeting its objectives
- the effectiveness of enforcement powers and mechanisms under the Privacy Act and how they interact with other Commonwealth regulatory frameworks
- the desirability and feasibility of an independent certification scheme to monitor and demonstrate compliance with Australian privacy laws'.

Matters that will not be considered as part of the review

The review will not consider either credit reporting under Part IIIA of the Privacy Act or the operation of Part VIIIA of the Privacy Act relating to the COVIDSafe app.

The review is separate from work already being undertaken to increase the maximum civil penalties under the Privacy Act, and to develop a binding privacy code for social media platforms and other online platforms that trade in personal information.

The full terms of reference are here.

Issues paper

The Attorney General's department has also released an issues paper outlining current privacy laws and seeking feedback on potential issues relevant to the reform of the Privacy Act.

Process and Timing

The closing date for submissions on the issues paper is 29 November 2020. The Attorney General's department has said that there will be further opportunity to comment following the release of a discussion paper 'early next year'.

The terms of reference state that a 'report of the review will be released following government consideration'. No date for the completion of the review, or specific release date of the final report have been announced.

OAIC has welcomed the review

In a short statement, the Office of the Australian Information Commissioner (OAIC) Angelene Falk welcomed the review, describing it as 'a landmark opportunity to ensure our privacy framework can respond to new challenges in the digital environment'.

Ms Falk said that OAIC's data protection experience has identified four 'key elements' necessary to support effective privacy regulation into the future. Namely:

- 'Global interoperability — making sure our laws continue to connect around the world, so our data is protected wherever it flows
- Enabling privacy self-management —so individuals can exercise meaningful choice and control
- Organisational accountability — ensuring there are sufficient obligations built into the system, and
- A contemporary approach to regulation — having the right tools to regulate in line with community expectations'.

Ms Falk said OAIC has undertaken a program of preparatory work to support its engagement in the law reform process and looks forward to playing a key role in the review.

[Sources: Attorney General media release 30/10/2020; Terms of reference; Issues Paper; OAIC media release 30/10/2020]

The Governance Institute has called for urgent action to cut the red tape burden on the charity sector

The Governance Institute has called for an urgent overhaul of existing state and territory fundraising legislation which it considers is weighing down the charity sector in 'red tape'.

Governance Institute CEO Megan Motto commented that pressure brought to bear on charities as a result of the COVID-19 pandemic has highlighted the failings of the current system. Ms Motto said,

> 'The sector needs be far less polite about the urgency of this overhaul and that's why today we are stepping up our calls for an overhaul of fundraising laws, ideally in time for the fast-approaching Christmas giving season…
>
> A nationally consistent framework would enable the sector – committed to assisting some of society's most vulnerable – to be able to react faster in times of crisis, more efficiently, and be better able to act on its purpose. Being tangled up in red tape only serves to distract them from core work.'

Ms Motto acknowledged the need for transparency and accountability, but questioned whether the current compliance burden is justified. Ms Motto said,

> 'when the compliance requirements are as high and unnecessary as we are currently seeing, it can prompt inefficiencies and waste. Charites simply cannot be as fast-acting as they should – and want – to be.'

Ms Motto added that an overhaul of the existing laws is also warranted from a governance perspective. Ms Motto said,

> 'This is such an important issue for good governance, especially as good governance is about creating the frameworks to make sure you are achieving the purpose of your organisation. And for these purpose driven organisations there is nothing more important than diverting resources away from an administrative burden and towards the purpose for which you are created'

[Source: Governance Institute media release 03/11/2020]

In Brief | Australia Post has issued a statement confirming the resignation of Group CEO and Managing Director Christine Holgate and also confirming her willingness to participate with the Australia Post board and management in the recently announced investigation into 'aspects of Australia Post expenditure'

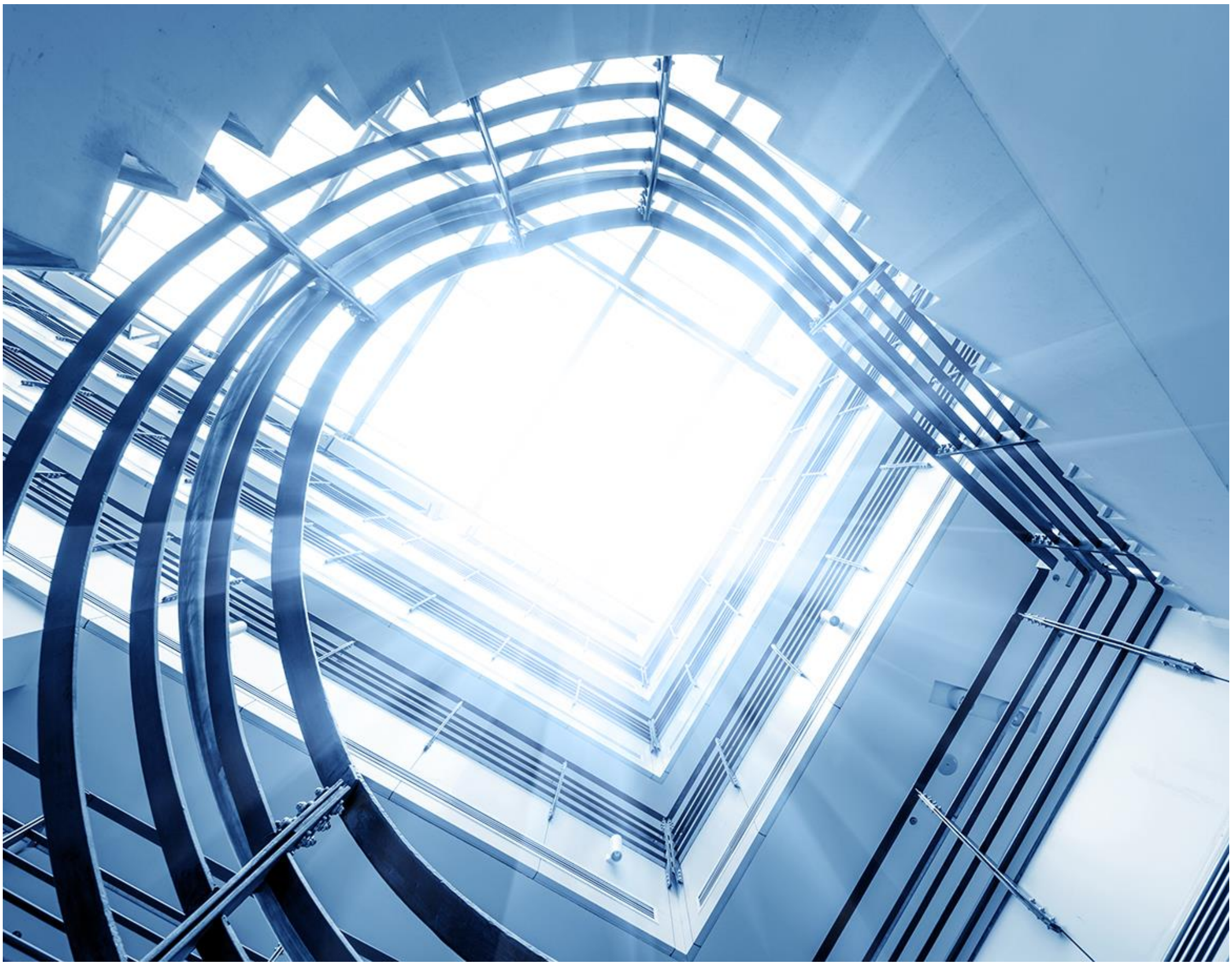
[Source: Australia Post media release 02/11/2020]

Restructuring and Insolvency

Top Story | Distressed Debt and Special Situations

MinterEllison has released a report, prepared in partnership with Acuris, reflecting on the implications of the current economic downturn and outlining the practical steps that companies and funds can take now to prepare them for future opportunities and challenges.

The full text of the report is available on our website here.



Other news

The government is consulting proposals to establish a Commonwealth Integrity Commission

The government has released two draft Bills proposing to establish a new Commonwealth Integrity Commission (CIC) for consultation.

- The draft Commonwealth Integrity Commission Bill proposes to establish the CIC. The CIC is described as:

> '…a centralised, specialist centre investigating corruption in the public sector. It will be established as an independent statutory agency, led by the Integrity Commissioner and assisted by the Law Enforcement Integrity Commissioner and the Public Sector Integrity Commissioner'.

- The draft Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill, which proposes to make 'necessary consequential amendments to existing Commonwealth legislation' to support the introduction of the CIC Bill.

A fact sheet outlining the key features of the CIC has also been released. This can be accessed here.

Announcing the consultation, Attorney General Christian Porter said that the CIC will have 'greater investigatory powers than a Royal Commission'. According to Mr Porter's statement CIC will be able to:

- 'compel people to give sworn evidence at hearings, with a maximum penalty of two years imprisonment for not complying;
- compel people to provide information and produce documents (even if the information would incriminate the person), with a maximum penalty of two years imprisonment for not complying;
- search people and their houses, or seize property (under warrant);
- arrest people;
- tap phones and use other surveillance devices to investigate them; and
- confiscate people's passports by court order'.

Timing

- The due date for submissions is 12 February 2021.
- No specific commencement timeframe for the CIC is proposed. The fact sheet states that timing will 'depend on the passage of legislation; the government will introduce the legislation to the Parliament once it has considered feedback received during the consultation period'.

[Sources: Consultation home page; exposure draft: Commonwealth Integrity Commission Bill; Exposure draft: Integrity and Anti-Corruption Legislation Amendment (CIC Establishment and Other Measures) Bill; Fact sheet; Attorney General Christian Porter media release 02/11/2020]

Response

Better off with nothing?

In an interview with the ABC, Geoffrey Watson SC, Director of the Centre for Public Integrity said that the proposed CIC is 'terrible' because it lacks both transparency and teeth. Characterising the CIC as having more power than a Royal Commission is incorrect, Mr Watson said.

Among other concerns about the proposed model, Mr Watson said that he considers it to be flawed because:

- The proposed CIC would only be able to investigate serious criminal offences in the public sector (for example, 'sports rorts' would not be in scope)

- The proposed CIC would not be able to initiate its own inquiries.
- The group of sources that could make referrals to the proposed CIC is limited. For example, the public is unable to make referrals to the Commission (this would mean that it cannot act on 'anonymous tip offs).
- There will be no public hearings and therefore very limited transparency.

Mr Watson expressed the view that 'we would be better off with nothing' because the proposed model is so flawed and said that he does not support the passage of the draft legislation on this basis.

[Source: ABC Interview 03/11/2020]

Separately, writing in The Conversation, Professor AJ Brown has also raised concerns about the proposed model including that the fact that, as drafted, the CIC will have limited jurisdiction – the proposed CIC's powers will only extend to 'about 20% of the Federal Public Sector' - and the fact that that there will be no public hearings.

[Source: The Conversation 02/11/2020]

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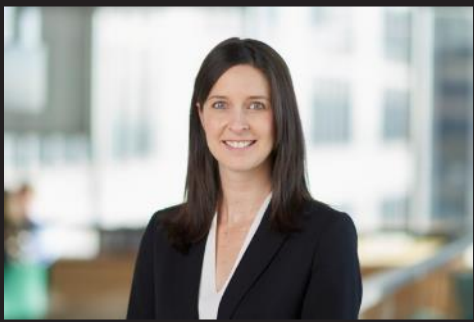

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