Governance News

COVID-19 Special Edition

25 November 2020

Contents

Diversity

Germany has flagged plans to legislate mandatory board gender quotas

Germany's government has flagged plans to legislate mandatory gender quotas, setting minimum requirements on the number of women serving on the boards of listed companies. If enacted, the proposed changes would mean that:

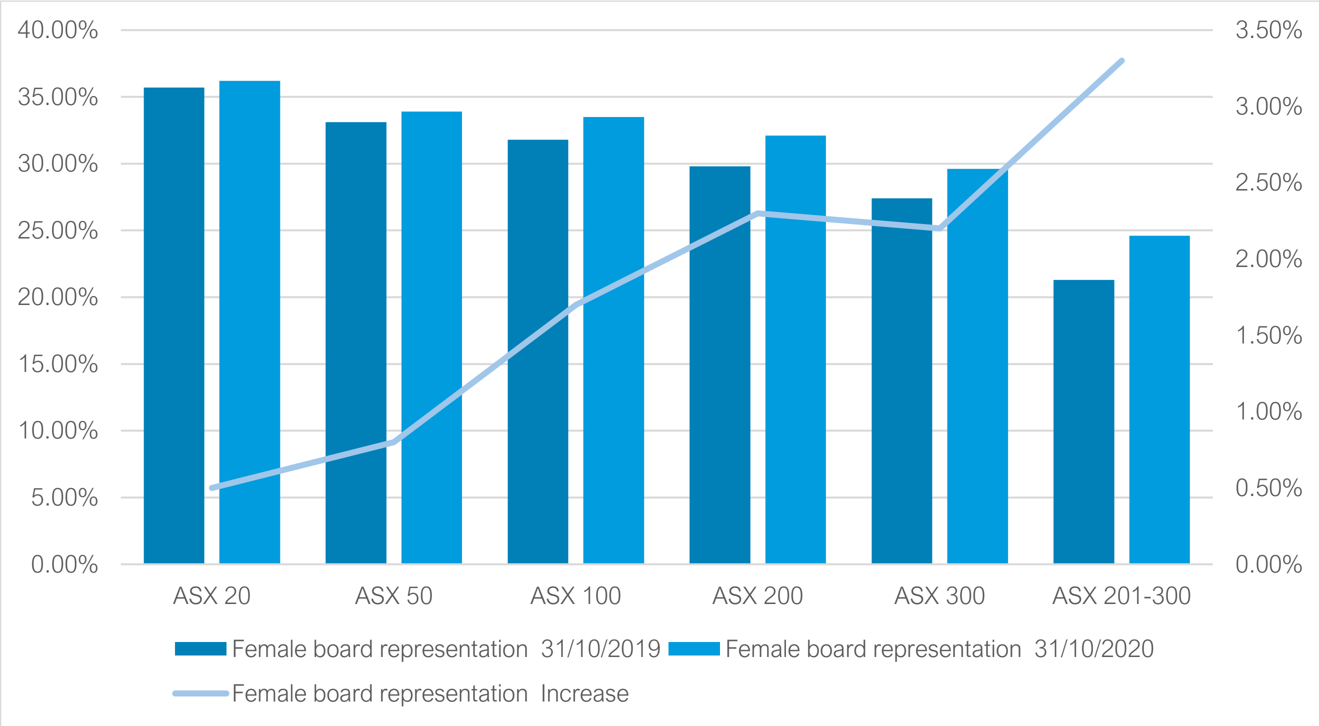
- The boards of listed listed companies with co-determination, will need to include at least one woman (if the board has four or more members).
- The supervisory boards of companies in which the federal government holds a majority stake would need to include at least 30% female members.

The government also plans to introduce similar requirements for health insurance companies and pension and accident insurance institutions, as well as the Federal Employment Agency.

[Source: BMFSFJ media release 20/11/2020]

More women sitting on boards: AICD data shows there has been an overall increase in female board representation over the twelve months to 31 October

The Australian Institute of Directors' (AICD) latest report into female representation on ASX 300 boards has found that the number of women sitting on boards has increased over the past twelve months, with representation on ASX 200 boards now standing at 32.10% - cracking the 30% target for the first time.



Though the number of women sitting on boards increased across the board, the increase was highest at smaller companies – though smaller companies still have the most work to do to meet the 30% target.

Though welcoming the overall increase, the AICD considers that there is still significant progress to be made.

- There were two companies on ASX 200 with no women on their boards as at 31 October2020.
- There are 87 ASX 200 companies yet to reach the 30% target. Of this group, 76 would only need to appoint one female director to meet the target.
- Representation on ASX 300 boards overall standards at 29.6%, dropping to 24.6% for companies falling into the ASX 201-300 bracket.

Commenting on the findings, AICD CEO and Managing Director Angus Armour, said

> 'This continuing upward trend indicates that the message about diversity is being heard. I am confident that we will see the ASX 300 reach the aggregate target in the very near future. We are calling on all companies who have not yet made active steps towards gender-balance in their leadership to consider the full pool of board-ready candidates for their next appointment.'

Mr Armour said that diversity in leadership is critical to ensure 'an effective post-COVID recovery'.

[Source: AICD media release 18/11/2020]

Disclosure and Reporting

KPMG finds most ASX 100 companies acknowledge climate risk as a financial risk in their reports, but trail their global peers in disclosing emissions reduction targets

KPMG has released the results of research into the quality of climate reporting by the world's 250 largest companies (G250) (based on Fortune Global 500 ranking for 2019).

The survey reviewed annual financial or integrated reports, sustainability reports and stand-alone reports and information on company websites published between 1 July 2019 and 30 June 2020.

Quality of reporting was assessed against 12 quality criteria, developed by KPMG. Pages 6-8 of the report outline the each of the criteria in detail.

Overall, the report found that work is needed to lift reporting quality, especially with respect to: use of scenario analysis and long term planning; reporting against the TCFD recommendations; and providing clear explanations of the extent to which companies are on track to meet carbon reduction goals/how their strategy supports the achievement of carbon reduction targets.

Separately, KPMG has also released a supplementary report outlining key trends in climate risk reporting by ASX 100 companies. This report highlights that though Australian companies are leading their global peers in terms of acknowledging climate risk as a financial risk, they are slower to set carbon reduction targets.

The table below provides a snapshot of KPMG's observations on the quality of reporting by G250 companies by reference to KPMG's quality criteria and the quality of reporting by ASX 100 companies.

G20 reporting vs ASX 100 reporting: How does the quality of reporting by ASX 100 companies compare?

KPMG'S 12 QUALITY CRITERIA		REPORTING BY THE 250 LARGEST COMPANIES GLOBALLY (G250)	REPORTING BY ASX 100 COMPANIES
Governance of climate related risk	▪ Reporting reflects that the company has assigned board responsibility for overseeing the company's response to climate change	▪ 44% of G250 companies report they have assigned board responsibility for overseeing the company's response to climate change. ▪ 100% of the 28 Japanese companies in the G250 sample have done so.	▪ 78% of ASX 100 companies clearly acknowledge in their reporting that climate change is a risk to their business which is significantly higher than the 56% of G250 companies that do so.
	▪ The Chair/CEO's message in the annual report or integrated report mentions climate change and/or climate-related risks	▪ 33% of G250 companies mention climate change in the Chair/CEO's message in the annual financial or integrated report. ▪ This proportion is higher for German companies: 59% of German companies do so. ▪ In contrast only 25% of US based companies and 15% of China based companies do so.	▪ 100% of miners, 100% of construction companies and 90% of financial services companies in the sample disclose this information.
	▪ Reports acknowledge climate change as a financial risk to the company	▪ A majority (56%) of G250 companies acknowledge climate change as a potential financial risk to their business in their financial reporting. ▪ This proprtion is higher for French, Japanese and US companies: 94% of French companies, 71% of Japanese companies and 54% of US companies acknowledge this in their reports. Only 47% of German companies do so (the report comments that many German companies still discuss the issue only in non-financial reporting). ▪ Overall, the oil and gas sector is the most likely to acknowledge climate risk as a risk to their business (81%). Health care is the least likely sector to do so (19%).	
Identification of climate related risk	▪ The annual report or integrated report contains a specific section on climate risk and/or the company publishes a stand-alone climate risk/TCFD report	▪ 31% of G250 companies include a section on climate-related risk in their annual financial (or integrated) reports OR publish a stand-alone climate risk or TCFD report. ▪ The proportion is higher for French companies: 78% of French companies do so. In contrast, only 6% of German companies and 2% of Chinese companies do so.	▪ 32% of ASX100 companies include TCFD or climate risk disclosures in the company's annual financial or integrated report and/or publish a standalone climate risk or TCFD report. This is broadly on par with

KPMG'S 12 QUALITY CRITERIA		REPORTING BY THE 250 LARGEST COMPANIES GLOBALLY (G250)	REPORTING BY ASX 100 COMPANIES
		▪ Overall, 53% of financial services companies in the survey and 50% of oil and gas companies take this approach.	G250 companies and a significant increase on three years ago. In 2017 only 4% of ASX 100 companies disclosed this information.
	▪ Both the physical and transitional risks related to climate change and net zero transition are covered in the report	▪ 47% of G250 companies report on both the physical and transitional risks. ▪ The proprtion is significantly higher in certain countries: 72% of French companies do so and 71% of both German and Japanese companies do so.	
Impacts of climate related risk	▪ Scenario analysis of climate-related risk is included	▪ 22% of G250 companies include scenario analysis of climate-related risks in their reporting. This rises to 50% for Japanese companies. Only 1% of Chinese companies take this approach.	▪ 20% of ASX100 companies include scenario analysis of climate related risks in their reporting which is broadly on par with the G250 (22%). ▪ 75% of banks, 43% of construction/materials companies and 67% of electricity companies included in the sample do so.
	▪ 'Reporting includes risk analysis in line with: a) two or more global warming scenarios and b) with a clear timeline'	▪ 12% of G250 companies report scenario analysis under two or more global warming scenarios. This proportion is significantly higher in Japan at 36%. ▪ 0% of French or Chinese companies report scenario analysis under two or more global warming scenarios. ▪ 17% of G250 companies report scenario analysis with clear timelines. 39% of French companies do so. ▪ Less than 10% of G250 companies reported under scenarios to 2050 (or beyond)	
	▪ Scenario analysis is aligned with 'recognised climate scenarios developed by reputable sources'	▪ 19% of G250 companies' scenario analysis was reported in alignment with recognised scenarios 'developed by reputable sources'. ▪ The most commonly used were the IPCC physical climate scenarios (which were used by around two thirds of the companies reporting scenario analysis) and the IEA transitional scenarios (which were used by just over half of companies reporting on scenario analysis).	
Reporting on net-zero transition	▪ Reporting 'states the company's ambition to achieve net zero carbon emissions at or before 2050 OR explains another target'	▪ 46% of G250 companies reported a net zero target OR other 'science-based targets'. Of this group, most (27%) reported against other 'science based targets'. ▪ 76% of German company reports included a net-zero target, dropping to 10% of US companies and 2% of	▪ 17% of ASX 100 companies report against a science based target as compared with 27% of G250 copanies. ▪ KPMG comments that though a further 6%

KPMG'S 12 QUALITY CRITERIA	REPORTING BY THE 250 LARGEST COMPANIES GLOBALLY (G250)	REPORTING BY ASX 100 COMPANIES
	Chinese companies. 41% of US companies opted to use other science based targets and 8% of Chinese companies also opted for this approach.	intend to report in line with science based targets in future Australia still trails the G250 on this criterion.
▪ The company's strategy to achieve its carbon reduction targets is clearly outlined	▪ 17% of G250 reports outline the company's strategy to achieve its carbon reduction targets. ▪ The proportion is significantly higher among German companies, with 88% including this information in their reports.	
▪ Progress against the targets is clearly communicated – it is clear whether the company is on track to meet its targets	▪ 24% of G250 companies clearly communicate whether the company is on track to meet its carbon reduction targets. ▪ This proportion is significantly higher among French companies, with 67% taking this approach.	
▪ The company uses an internal carbon price or 'shadow price'	▪ 11% of G250 companies report using an internal carbon price or 'shadow price'. The proportion is significantly higher among French companies, with 44% including this information in reports.	

[Sources: KPMG media release 20/11/2020; Full text global report: Towards Net-Zero; Full text report: Australian supplement]

Markets and Exchanges

ASIC has launched an investigation into the recent ASX outage, ASX has pledged its full cooperation

Context

The ASX cash equity market trading platform failed to reopen for trading on 16 November after an outage that occurred during the opening auction. In a statement, ASX said that the outage was linked to the launch of the new ASX Trade System which live the same day. The 'root cause' of the issue was stated to be 'a software issue limited to the trading of multiple securities in a single order (combination trading) created inaccurate market data'.

ASIC issued statements (ASIC media releases 16/11/2020; 17/11/2020) following the 16 November outage and the subsequent issue with the ASX Centre Point matching system, confirming that it is 'actively assessing ASX's compliance with its market licence obligations and is considering further actions to ensure the adequacy of ASX's human, financial and technological resources to operate its markets in an orderly manner'.

ASX has confirmed that ASIC has launched an investigation

The ASX has issued a short statement confirming that ASIC has commenced an investigation into the ASX Trade outage on Monday 16 November and confirming that it will 'cooperate fully' with the investigation.

[Source: ASX media release 23/11/2020]

United Kingdom | Review of the UK listings regime launched

The UK government has commissioned an independent review to be led by Lord Hill of Oareford to 'gather evidence and make recommendations to the government and UK regulators on how to encourage more high-quality UK equity listings and public offers'.

Scope of the review

The terms of reference include a non-exhaustive list of the issues the review is expected to consider.

These include consideration of:

- whether there is a case for relaxing/altering existing rules concerning 'free floats, dual class share structures, and track record requirements' as well as current prospectus requirements
- specific actions the government could take to increase the appeal of listing in the UK. For example, the review will consider whether entry requirements could be streamlined for companies that already have a primary equity listing on markets outside the UK that are assessed to have high standards of corporate governance

The review is expected to consider both legislative and non-legislative measures and to make recommendations that 'may fall to the Financial Conduct Authority' to consider/implement. Any recommendations relating to FCA rules would be subject to further public consultation by the FCA.

The terms of reference are here.

The review will report to HM Treasury in 'early in 2021'.

Call for evidence

Lord Hill has commenced the review by issuing a call for evidence on the appropriateness of current requirements and 'whether, consistent with global standards, we can improve the flexibility and proportionality of our regulatory system so as to support growth and innovation'.

In particular, he has asked for feedback on the issues set out in the table below.

The deadline for submissions is 5 January 2021.

ISSUE	COMMENTS
Whether the existing 25% free float requirement remains appropriate	Currently, in order to a company to list, 25% of a company's shares must be available for the public to purchase (though the FCA has discretion to accept a lower level). The review calls for comment on: ▪ whether the 25% requirement remains appropriate or whether/how it should be changed; ▪ how liquidity risk could be assessed using alternate levels ▪ whether there other changes/alternative measures to the free float requirements that should be considered.
Allowing dual class share structures	Currently, the Financial Conduct Authority's (FCA) Listing Rules for the LSEMain Market's Premium Segment do not allow for dual class share structures. The review seeks comment on: ▪ whether dual class share structure should be allowed in the Premium listing segment of the London Stock Exchange and if so, what limitations should apply ▪ whether there are other ways of maintaining high corporate governance standards (while allowing dual class share structures) ▪ views on/evidence about the level of demand for dual class share structures among issuers and the benefits/risks for investors

ISSUE	COMMENTS
Whether existing 'track record requirements' remain appropriate	Currently for a company to be admitted to Premium listing, the FCA's Listings Rules state it must have a 'proven track record' of earning revenue and be underpinned by a business model that is profitable and sustainable, backed up by three years of accounts. The review seeks comment on: ▪ Whether existing track record requirements are a barrier to listing ▪ If so whether the requirements should be made more flexible and how this could be achieved.
Whether existing prospectus requirements remain appropriate	Broadly, the review seeks feedback on whether existing rules about when prospectuses need to be issued remain appropriate and if not, how existing disclosure triggers should be modified. More particularly the review seeks views on whether: ▪ existing thresholds for a prospectus to be produced are calibrated appropriately to the size/depth of UK markets ▪ how current prospective requirements could be changed 'to better reflect the UK markets and the types of issuers listed on them' ▪ whether the loss of disclosure or liability attached to a prospectus document should be 'replaced by any alternative measures if the general exemptions to a prospectus are widened'
Whether dual listing requirements remain appropriate	Currently when a company dual lists it must comply with listing requirements for both markets. The review seeks feedback on whether this is a barrier to dual and secondary listing and if so, what measures could be implemented to encourage dual/secondary listings.
Views on whether there are other issues the review should consider	The review seeks views on whether there are 'any other immediate issues' that should eb considered and whether there are any 'non-regulatory, non-legislative actions that could the UK take to promote the use of public equity markets'.

[Source: HM Treasury media release 19/11/2020; Policy paper: Call for evidence 19/11/2020]

Regulators

Top Story | 'Regulation as better': ASIC's Acting Chair outlines ASIC's regulatory stance

Key Takeouts

- In a recent speech, Australian Securities and Investments Commission (ASIC) Acting Chair Karen Chester outlined ASIC's recalibrated, lighter-touch, outcomes-based approach to regulation, explaining that where business 'steps in and steps up' ASIC will be able to 'step back'.
- Ms Chester said the regulator now has the range of regulatory tools required to facilitate this approach.
- ASIC's 'why not litigate' stance is unchanged – ASIC will continue to take into account the current economic environment/implications of ASIC's regulatory actions, when determining whether proceeding with litigation is in the public interest.
- The shift in approach does not mean that ASIC will not take enforcement action (where necessary) and this remains a focus for the regulator.
- Forthcoming design and distribution obligations: Ms Chester said that if business complies with the forthcoming design and distribution obligations it should 'provide scope for less enforcement action from ASIC' and may 'also provide an opportunity for deregulatory initiatives over time'. Ms Chester observed, 'it's really up to business to pave the way for such deregulation to ultimately be contemplated by government'. Ms Chester added that ASIC expects to release its final regulatory DDO guidance 'in coming weeks'.

Overview

In a wide-ranging speech entitled 'Getting on with it' Australian Securities and Investments Commission (ASIC) Acting Chair Karen Chester spoke about ASIC's regulatory stance, the effectiveness of ASIC's actions in responding to the pandemic and executing its core function, and ASIC's role in supporting Australia's economic recovery.

A core theme of the speech is that ASIC is committed to taking a lighter-touch, outcomes based approach to regulation - only intervening where business has failed to 'step in, and step up'.

> 'When we see significant detriment, or poor market outcomes – be it actual or likely significant harm to consumers or investors, or an absence of healthy competition creating fertile ground for potential misconduct. Only then do we need to step in'.

'Regulation as better' – a lighter touch regulatory stance that allows business to 'get on with it'

Mr Chester said that the disruption triggered by COVID-19 is an opportunity for the regulator (and for business) to reassess its approach in light of 'the new normal'.

> 'At ASIC we recognise that this is a time of a potential "new better" for regulators and for business – where boards step in early and step up decisively to manage both financial and non-financial risk. And with that "step in and step up" by business, ASIC can step back. To only intervene when the data (early warning signs) of harm and misconduct require us to do so. We need to support the economy, promote market integrity and efficient and competitive markets. We need to protect consumers – be they individual consumers, be they vulnerable, be they retail investors, be they wholesale investors, be they small business'.

Ms Chester said that ASIC will focus on its core function: to 'monitor and promote market integrity and consumer protection in relation to the Australian financial system' using the regulatory tools at its disposal, while also supporting the COVID-19 recovery. In saying this, Ms Chester made clear that she considers that ASIC now has the necessary regulatory tools required to carry out this function and to move beyond 'regulation as usual' to 'regulation as better'.

> 'So ASIC's new age is here. And we are getting on with it. We are better placed to address harm arising from evolving products and practices without compromising the potential for competitive disruption and

> innovation. Which means we can limit or avoid the future need for more intervention and more regulation. But we will also maintain our enforcement focus…The easiest way to stay off our radar is by living up to Parliament's and community expectations and following the DDO roadmap. Our new age is about awareness of market realities and placing a competitive market, and consumer outcomes, at the centre of everything we do. Because at the end of the day it's our job. And we are simply getting on with it'.

Looking forward: ASIC's product intervention power and the design and distribution obligations

Ms Chester described ASIC's product intervention power (PIP) and the forthcoming design and distribution obligations (DDOs) (which commence on 5 October 2021) as 'two bookends' that 'exemplify outcomes based regulation'. She said that in combination, they will enable ASIC to recalibrate its approach to 'firmly' focus on consumer and market outcomes.

- PIP: Ms Chester observed that ASIC is already using PIP where it considers it to be necessary observing that 'because PIP is proactive and flexible, ASIC only needs to take enforcement action if there is non-compliance coupled with significant consumer detriment'.
- DDO: Ms Chester said that if business complies with the DDO it should 'provide scope for less enforcement action from ASIC' and may 'also provide an opportunity for deregulatory initiatives over time'. Ms Chester observed, 'it's really up to business to pave the way for such deregulation to ultimately be contemplated by government'. Ms Chester added that ASIC expects to release its final regulatory DDO guidance 'in coming weeks'.

Ms Chester observed that the combination of these powers will enable ASIC to take a lighter touch approach to regulation, provided that firms 'step up'.

> 'When we see significant detriment, or poor market outcomes – be it actual or likely significant harm to consumers or investors, or an absence of healthy competition creating fertile ground for potential misconduct. Only then do we need to step in. For today, this should only be when Boards and business have not stepped in and up, to deter misconduct and deliver good consumer outcomes. Design and distribution obligations are the (self-designed) roadmap for them to do so. Product intervention our tool to act when and if they don't. So we have the tools. The software script is written. Now we just need to let the program run, while we watch and act if the program fails to deliver the desired outcomes'.

ASIC's 'why not litigate' approach

Ms Chester explained that this regulatory stance is not inconsistent with ASIC's 'why not litigate' approach which already requires the regulator make a judgement call about whether litigating is in the public interest before commencing litigation. That is, before proceeding, two tests need to be satisfied: 'have breaches of the law more likely than not occurred – do we have the evidence? And secondly, is pursing the matter in the public interest, is there regulatory value?'. Ms Chester's view is that 'embedded' in the second of these tests, is consideration by the regulator of the 'the real economic impacts of our regulatory decisions and actions. And how that may impact consumer and investor vulnerabilities and harms both in the here and now, and beyond'. Ms Chester said that ASIC's decision not to proceed to seek special leave to appeal the Westpac responsible lending case is one example of this approach.

Commenting briefly on ASIC's recent losses and the commentary in the press, Ms Chester said that though proud of its successful actions, it is not to be expected/it is perhaps not desirable that ASIC's actions will always be successful. For example, it could signal that ASIC is pursuing only easy wins. Likewise, Ms Chester observed that insights/lessons learned from losses may help inform ASIC's approach and those of policy makers, and 'importantly a win is not always the single prerequisite for market deterrence'.

A data-driven, proportionate approach: How ASIC is already deploying the full range of available regulatory tools available

Ms Chester said that ASIC's approach is data driven - ASIC uses data from reports of misconduct, recurrent data, market intel to competition analytics to identify issues, to inform the appropriate regulatory response and to ensure the response is proportionate. ASIC then uses the right tool or combination of tools to address the issue. The importance that data plays in ASIC decision making is reflected in ASIC's recent investment in its 'data foundations' and in ASIC's recalibrated data strategy.

Ms Chester said that ASIC has implemented new systems to enable better use to be made of existing data and is now working on 'scaling up' its analytics and data collection capability. This will enable the regulator to better 'detect early warning signs of harm and unhealthy competition in markets'. Ms Chester said that ASIC already has some pilot projects underway.

Ms Chester then outlined a number of examples of the way in which ASIC has deployed the range of regulatory tools available to address specific issues. These included:

- ASIC's recent work in consumer credit insurance which entailed use of multiple 'tools': surveillance, transparency (ASIC's report), (ongoing) investigative work, remediation to consumers, guidance to industry on product design and sales practices, and intervention (banning unsolicited outbound telephone sales).
- ASIC's recent review of the Buy Now Pay Later sector which Ms Chester described as an example of a 'powerful yet simple use of regulatory transparency'. Ms Chester observed, 'Our report highlights the ability of recent regulatory reforms and new tools to deal with any consumer harm. By embracing their design and distribution obligations and own self-regulatory code, the industry can go a long way to addressing consumer harm. To step in and step up'.
- ASIC's 'true to label' project – where ASIC used a combination of surveillances, transparency (media releases), investigation, intervention (sending letters of concern to regulated entities) and enforcement action to identify investment fund products with 'inappropriate or confusing product labels'. Ms Chester said that 13 responsible entities were asked to take corrective action and that to date, 'most' have done so. ASIC has commenced proceedings against one group and may take further enforcement action.

Ms Chester flagged lack of sufficient data on investment management and small amount credit contracts as areas of concern for the regulator, stating that ASIC has particular concerns about managed funds. Ms Chester said that ASIC is currently working with Treasury to ensure ASIC has the data it needs/and is able to publicly share it.

ASIC's response to COVID-19

Ms Chester said that ASIC's new regulatory powers, coupled with ASIC's 'new and better use of data' have already enabled ASIC to make positive changes and ensured ASIC was in a position to step 'in an up' to help business and consumers through the disruption caused by the COVID-19 pandemic. Ms Chester then outlined how ASIC had deployed new 'safety valve' powers – eg powers to provide relief and/or to issue waivers – as 'regulatory shock absorbers' during the pandemic, to rapidly and efficiently provide relief to business. For example, ASIC provided relief facilitate virtual shareholder meetings and extended the period for lodging financial reports as well as providing temporary relief to facilitate capital raisings.

ASIC also recalibrated its regulatory priorities and moved immediately, in line with the government's actions, to defer commencement of certain Hayne reforms - ASIC deferred commencement of the mortgage broker best interests duty and the design and distribution obligations.

ASIC also acted to 'disrupt emerging misconduct' and escalating harms for example through reviewing superannuation trustee websites/other communications about the early release of superannuation scheme and secure 'corrective action' where needed and through lending a 'very public voice for consumer awareness about those who prey on the vulnerable'.

Reminder to banks/insurers to ensure consumer 'safeguards' are in place

Ms Chester said that though ASIC 'commends' the way in which insurers and banks have responded to the various challenges throughout 2020 (including the 'escalated natural disasters' and the pandemic), it remains important for firms to ensure that 'safeguards are in place to make it easy for consumers to navigate themselves to better outcomes'. For example Ms Chester said that: a) complaints processes should be straightforward; b) application and switching processes should be streamlined as much as possible; and c) products/services should not contain 'surprise'/hidden fees.

Ms Chester said that ASIC will also continue to support government legislative reform. 'We will intervene in a targeted way where needed, and (in response to industry demand) we will issue guidance to help business meet the challenges of the COVID economy and legislative reform'.

ASIC's competition mandate

Touching briefly on ASIC's competition mandate, Ms Chester said that ASIC is currently undertaking an assessment/review of competition in the Australian funds management industry to 'identify where competition is effective, where it is not, and if not why not' and is supporting Treasury as it 'clears the way for business to operate efficiently and competitively'.

Consumer remediation

- ASIC is currently monitoring 'over 100 remediations' which Ms Chester said could see a return of at least that could see a return of at least $4.6 billion to consumers.
- Ms Chester said that ASIC will initiate consultation on proposed regulatory guidance for remediation shortly. The guidance will outline ASIC's understanding of 'what the law requires of licensees'.
- ASIC will also release, in response to industry demand a 'field guide' called: Making it Right: how to run a consumer-centred remediation. This guide will draw on ASIC's experience 'with remediations and behavioural science to help licensees with the "day-to-day" design and execution of consumer-centred remediations. Licensees have been asking us for just those sort of practical tips'.

Enforcement update – ASIC remains focused on enforcement (where necessary)

- Hayne 'legacy pipeline':
  - Ms Chester said that of the 13 Hayne referrals to ASIC, five are the subject of civil litigation, two remain under investigation and one matter has been resolved through court action. Five referrals have been concluded with no further action.
  - Currently ASIC has 16 Hayne Commission case study matters underway. Six are currently before the courts; three are being considered by the Commonwealth Department of Public Prosecutions (CDPP) and seven are under investigation. A further five case study matters have been finalised: three resulted collective civil penalties of over $20 million and two others resulted in criminal convictions and fines.
- COVID-19 related misconduct: Ms Chester said that ASIC is also focused on addressing: predatory lending practices; mis-selling of products; poor claims handling; scams; unlicensed conduct; and misleading and deceptive advertising. Ms Chester said that ASIC has 13 investigations underway that fall into this category and has commenced court proceedings in connection with a number of them.
- Other investigations: By the end of December 2020, ASIC plans to file approximately15 civil cases, refer 'around 20 briefs' to the CDPP relating to approximately 25 individuals or companies, and refer 'around 10' individuals or entities for administrative action.
- Six other focus areas: ASIC is also focussed on addressing: misconduct in superannuation and insurance; illegal phoenix activity; auditor misconduct; 'new and emerging types of misconduct' using new technologies; significant market misconduct (eg such as insider trading, market manipulation); and continuous disclosure matters.

Increased accountability is welcome

Ms Chester said that ASIC accepts the need for increased accountability.

- ASIC fully supports the independent review currently being undertaken by Treasury being undertaken by Treasury and is committed to making the necessary changes to ensure there is no repeat of the issues that led to it.
- Ms Chester also welcomed oversight of ASIC's regulatory work by the parliamentary joint committee, and in future by the proposed new Financial Regulator Assessment Authority.

[Source: Keynote address by ASIC Acting Chair Karen Chester at the AFR Banking & Wealth Summit 18/11/2020]

Financial Services

Top Story | Business Interruption Insurance for COVID-19 – expert overview of the recent test case

On 18 November, the NSW Court of Appeal handed down its decision in HDI Global Specialty SE v Wonkana No. 3 Pty Ltd [2020] NSWCA 296. The case was brought as a test case by the Insurance Council of Australia, on behalf of insurers selling commercial property policies with business interruption cover, to provide a measure of clarity around the treatment of pandemic-related claims.

The key issue in the case was whether reference to the (repealed) Quarantine Act 1908 (Cth) in exclusion clauses should be read to encompass the Biosecurity Act 2015 (Cth) (which replaced it). The Court unanimously rejected the insurers' arguments and found that the references to the Quarantine Act 1908 (Cth) could not be construed as references to a replacement statute.

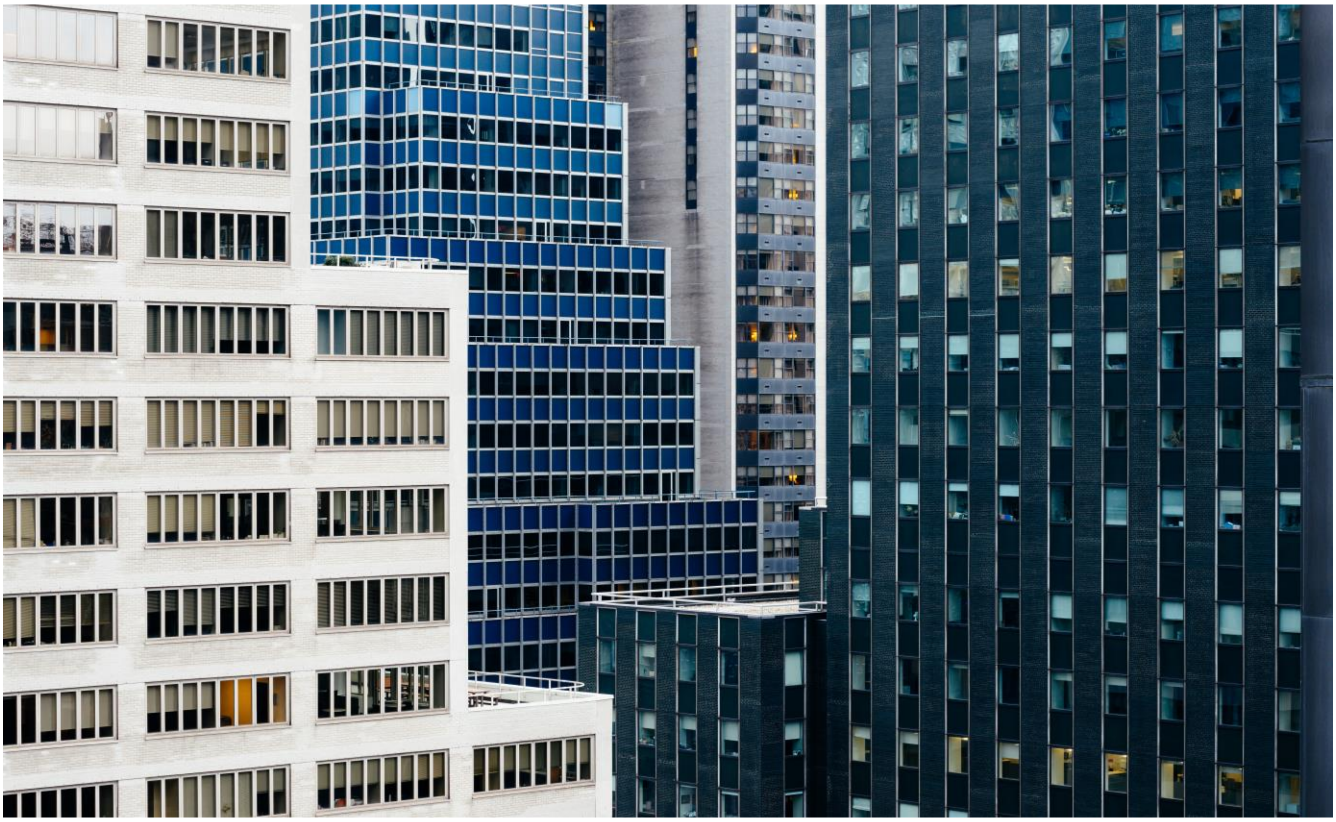
The MinterEllison team have prepared a detailed case note summarising the decision. This can be accessed here.

The ICA plans to bring a second BI test case

Following the decision in HDI Global Specialty SE v Wonkana No. 3 Pty Ltd [2020] NSWCA 296 (you can find our case note here) the Insurance Council of Australia (ICA) has flagged its intention to bring a second business interruption insurance test case on a separate issue. The case will 'explore outstanding policy matters, including proximity and prevention of access, relating to the pandemic and business interruption insurance'.

The ICA says it seeks to progress 'a court resolution of these matters quickly'. An update is expected in the 'coming weeks'.

[Source: ICA media release 19/11/2020]



Top Story | Fundamentally defective': Consumer groups oppose proposed responsible lending changes

Consumer groups have called on the government to abandon the proposed roll back of responsible lending obligations and to retain existing requirements.

Context

- On the 25 September, the government announced plans for the proposed overhaul of consumer credit laws, including plans to roll back what it considers to be overly prescriptive responsible lending obligations. The object of the proposed changes is to improve the flow of credit and support the nation's economic recovery. You can find our summary here.
- On 4 November, the government released a package of draft legislation for consultation, proposing to implement these changes.
- Broadly (if enacted) the proposed changes will mean that from 1 March 2021:
  - Responsible lending obligations in Chapter 3 of the National Consumer Credit Protection Act 2009 (Cth) (NCCP Act) will only apply to: a) small amount credit contracts (SACCs); b) 'SACC-equivalent loans' (low limit credit contracts) provided by ADIs; and c) consumer leases.
  - This means that ADIs will no longer be required to comply with the responsible lending obligations NCCP Act (except 'SACC-equivalent loans). ADIs will continue be required to comply with the prudential standards set and enforced by the Australian Prudential Regulation Authority.
  - Non-ADI credit providers will need to comply with new non-ADI lending standards, modelled on 'key elements' of APRA's prudential standards applying to ADIs.
  - All credit assistance providers will need to comply with the 'best interests' obligations legislated for mortgage brokers.
- Consultation on the proposed reforms closed on 20 November.

You can find our summary of the proposed reforms here.

Consumer groups have called for the changes to be abandonned

Consumer groups - Consumer Action Law Centre (Consumer Action), Financial Rights Legal Centre (Financial Rights), Financial Counselling Australia, Consumer Credit Law Service (WA) Inc (CCLSWA), CHOICE, Uniting Communities Consumer Credit Law Centre SA (CCLCSA), Care and Consumer Law Centre ACT (CARE ACT), NILS Network of Tasmania, Indigenous Consumer Assistance Network and Redfern Legal Centre – have released their submission to the consultation on proposed changes to consumer credit laws.

The submission argues strongly against the proposed changes on the basis that they are contrary to the interests of consumers.

The submission explains,

> 'We normally provide constructive feedback in these consultations, aimed at improving the impact of planned changes to policy and law. Unfortunately, we are unable to say anything positive about the Government's plans. The repeal of responsible lending obligations for almost all forms of consumer credit is the most short-sighted, poorly thought out policy proposed by a government in credit or financial services in recent memory. The Draft Materials are fundamentally defective, and no number of amendments can solve this'.

The submission recommends that the government should 'abandon this legislation and retain responsible lending laws in their current form.

The remainder of the submission outlines 'the range of problems that would result' if the changes were enacted, with case studies to illustrate. Appendix A of the submission includes a number of additional case studies that illustrate the importance of responsible lending.

Public campaign launched to block the changes

Separately, 125 consumer advocacy groups have launched a petition urging parliamentarians to block the proposed changes if/when the legislation is introduced.

The group argues that the proposed changes will weaken necessary consumer protections and see consumers worse off. The group also argues that rolling back responsible lending obligations will increase the risk of the sorts of conduct issues highlighted by the Hayne Commission.

In addition, the group argues that the proposed changes run contrary to the Hayne Commission's recommendation calling for existing responsible lending laws to be enforced.

According to consumer groups national polling supports blocking the changes with most people polled agreeing that lenders should be required to check prospective borrowers' ability to repay a loan before approving it – 79% of people polled agreed that banks should be required to always check a customer's ability to repay before offering a mortgage.

[Sources: Treasury consultation: Consumer Credit Reforms 23/11/2020; CHOICE petition; CHOICE Media release 24/11/2020]

Hayne reforms: ASIC is consulting on a proposed protocol to address the issue of 'rolling bad apples', SAFAA says the proposed approach is unworkable and has called on ASIC to adopt the simpler US approach

Context

If enacted, the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 (Bill), will (among other things) enable the Australian Securities and Investments Commission (ASIC) to make a legislative instrument to give effect to a reference checking and information sharing protocol for financial advisers and mortgage brokers.

Based on the Bill, ASIC has released a consultation paper - ASIC CP 333 Implementing the Royal Commission recommendations: Reference checking and information sharing - seeking feedback on:

- ASIC's proposed legislative instrument which gives effect to the proposed ASIC Reference checking and information sharing protocol (ASIC protocol); and
- A draft information sheet intended to provide guidance on the proposed protocol.

Timing

- The deadline for submissions is 29 January 2021.
- The proposed commencement date for the new obligations is 1 October 2021 (subject to the passage of the Bill). ASIC plans to finalise the new protocol and information sheet before this date.

Purpose of the proposed changes

The purpose of introducing the new reference checking and information sharing requirements is to increase transparency around financial advisers' and mortgage brokers' employment history, helping to ensure against the issue of 'rolling bad apples' identified in the Hayne report and more specifically to implement the government's response to Hayne recommendations 1.6 and 2.7.

Consistent with this broader aim, ASIC states that the intention of the ASIC protocol is:

> …'to promote better information sharing about the performance history of financial advisers and mortgage brokers—focusing on compliance, risk management and quality of advice. Requiring all AFS licensees and credit licensees (together, 'licensees') to comply with the ASIC protocol will ensure there is a consistent practice throughout the advice and mortgage broking sectors, and that employment information will be available about all financial advisers and mortgage brokers'.

What's being proposed

Proposed new reference checking/information sharing process

Broadly, ASIC is proposing that before hiring/authorising a new financial adviser/broker ('prospective representative'), recruiting licensees would need to 'take reasonable steps' to obtain a reference from a 'referee licensee'. The draft protocol sets out the proposed process and outlines the proposed new obligations for 'referee licensees' (the current and former employers of advisers) and hiring/recruiting licensees.

What are reasonable steps?

It's proposed that before hiring/authorising a new financial adviser/broke recruiting licensees would need to 'take reasonable steps' to obtain a reference from a 'referee licensee'. Taking reasonable steps in this context would require the hiring/recruiting licensee to:

- Seek written consent from the 'prospective representative' to request a reference. Under the draft protocol, personal information about a 'prospective representative' could only be shared with the prior written consent of the prospective representative. Schedule 1 of the draft protocol is a template consent form to be used for this purpose. The draft protocol also provides that a 'prospective representative' can withdraw their consent at any time, as long as they do so in writing (eg by sending an email).
- Subject to consent being given, request a written reference from the relevant 'reference licensee' using ASIC's template request form. The template reference request is set out in Schedules 2 and 3 of the draft protocol and asks for information about a prospective licensee's employment history over the past five years. ASIC observes that this requirement does not prevent hiring licensees from seeking additional information about 'prospective representatives' provided that the information being requested does not 'reduce the scope of the template reference request'.

Who is a 'referee licensee' and what are their key obligations?

- 'Referee licenses' are the current and former licensees who employ/employed or authorised the 'prospective licensee'. Table 1 at page 3 of the draft information sheet outlines which 'referee licensee' hiring licensees would be required to contact in different circumstances. For example, where the person they're looking to hire is currently employed, ASIC expects that as a minimum, hiring licensees would contact the person's current employer for a reference. The draft information sheet suggests that hiring licensees may wish to seek references from additional former licensees to check for 'systemic issues' ie 'repeated conduct or performance issues that demonstrate the prospective representative has not responded to remedial action'.
- Upon receipt of a written request to do so, accompanied by the written consent of the 'prospective licensee', referee licensees would be required to provide the written reference within ten business days unless a longer period (up to a maximum of 20 business days) is agreed with the 'recruiting licensee'.
- Referee licensees would be required to include in the written reference factual, current and complete information about the past performance/conduct of the prospective representative over the last five years. The draft information sheet states that referee licensees are expected to provide,

  > 'all the information you are aware of and reasonably consider to be relevant to answer the template reference request. Your response should be complete, accurate and based on documented facts that have been verified. Information given in a reference should be objective and relevant to the role and the information required by the template reference request'.

- Where conduct investigations/inquiries/compliance audits are underway or a complaint has been raised but has not been resolved/concluded at the time the reference is requested, licensees will be required to include the fact in their reference and to provide an updated reference to the recruiting licensee once the matter is concluded (except in certain circumstances eg if the recruiting licensee says that they no longer intend to employ or authorise the 'prospective representative').
- To support open and honest communication, the defence of qualified privilege will apply to information shared in accordance with the ASIC protocol. However, it will only extend to information required to be given under the template request and not to any additional information requested/conduct that occurred more than five years ago.

- Referee licensees would be required to 'have adequate arrangements in place to enable hiring licensees to be able to contact them for reference checking/information sharing purposes eg by making the information available on their website.

At what point in the hiring process do recruiting licensees need to obtain a reference?

ASIC's expectation is that recruiting licensees obtain a reference before actually hiring the 'prospective representative' but otherwise does not specify when in the hiring process this should occur. The draft information sheet refers recruiting licensees to the Standards Australia handbook for guidance on the timing of reference requests.

Record keeping obligations

Referee licensees and recruiting licensees would also be required to keep 'accurate and complete written records for five years' as evidence of their compliance with the protocol. This would mean keeping copies of: a) consents given, requested, refused or withdrawn; b) references requested by a recruiting licensee; c) references and updated references given by a referee licensee; d) agreements with agents relating to the ASIC protocol, and e) policies and processes for handling personal information.

Sub-authorisation

Recruiting licensees would also be required to take reasonable steps to conduct reference checking in accordance with the protocol about individuals who are sub authorised under section 916B of the Corporations Act or section 65 of the National Credit Act to provide personal advice about relevant financial products or mortgage broking services by licensees. The draft information sheet states that it is up to recruiting licensees to 'decide what arrangements to put in place to ensure you comply with the ASIC protocol in such situations'.

Checklists to support compliance

Tables 3 and 4 at p12-13 in the draft information sheet are checklists of questions that ASIC suggests licensees should ask when requesting a reference or receiving a request for a reference under the ASIC protocol.

Authorised agents

Referee licensees and recruiting licensees would be allowed to authorise an agent to undertake reference checking and information sharing requirements on their behalf in accordance with the draft protocol. ASIC makes clear that 'in these circumstances, you are responsible for the acts or omissions of your agent in relation to the ASIC protocol'.

[Source: ASIC media release 19/11/2020; Consultation Paper 333 (including draft instrument and information sheet)]

Why not follow the US? The Stockbrokers and Financial Advisers Association (SAFAA) warns the proposed approach is 'unworkable'

The Stockbrokers and Financial Advisers Association has raised concerns about ASIC's proposed approach to reference checking which is considers to be 'unworkable'.

In the first place, SAFAA is concerned that the proposal to require hiring licensee to request information from advisers' current employers unnecessarily and unfairly exposes advisers to the risk of 'retribution or serious harm from their existing employer'. Commenting on this, SAFAA CEO Judith Fox states,

> 'It is not fair to require a prospective employer to contact an adviser's current employer and let them know that the adviser is seeking a job elsewhere…In what other profession are you required to effectively tell your employer that you are looking for another job?'

In the second place, SAFAA questions whether the proposed approach will be effective. SAFAA's submission states,

> '…there is a real uncertainty surrounding the question of consent, and what is to happen if an adviser were to refuse consent. This was left entirely silent in the draft Bill. If it were the case that an adviser could simply refuse consent, then the entire scheme could potentially become ineffective'.

SAFAA's submission suggests that a better approach to addressing the issue of 'rolling bad apples' would be to make information about the compliance record of individual advisers publicly accessible via a central register – which is the approach that has been implemented successfully in the US. This would not only be more efficient and simpler than the approach put forward by ASIC, but make advisers' compliance records publicly searchable.

SAFAA CEO Judith Fox writes,

> 'Rather than reinventing the wheel, we urge ASIC to consider the US model which already works. There is a way of protecting consumers from harm that is also fair on advisers. Having a central register of this information whether through the use of the existing ASIC Financial Advice Register or some other central body overcomes problems we have identified with the government's original proposal now put forward by ASIC for compulsory record-checking that could prejudice advisers seeking to move jobs. It is not fair to require a prospective employer to contact an adviser's current employer and let them know that the adviser is seeking a job elsewhere. A central source for enquiries rather than a model that directs enquiries to the adviser's current employer is a much more efficient and fair system of compulsory reference checking,'
>
> [Sources: SAFAA media release 19/11/2020; SAFAA submission]

Work on 'critical' reforms has recommenced: APRA will shortly consult on changes to the bank capital framework

In his speech to the Australian Financial Review Banking and Wealth Summit Australian Prudential Regulation Authority (APRA) Chair Wayne Byres spoke three 'critical' policy reform projects, paused because of the COVID-19 pandemic that have now recommenced: remuneration reform; changes to bank capital requirements and increasing transparency around superannuation fund performance (the superannuation data transformation project).

Mr Byres commented that though the projects 'may not greatly help us navigate our way out of the current crisis. They will, though, further strengthen the resilience and performance of the financial system, and ensure we are better equipped whenever the next crisis comes along'.

Remuneration reform

- Mr Byres said that APRA considers an effective remuneration framework to be a key plank in a 'resilient financial system' - 'long-term financial soundness requires prudent incentive structures and clear accountabilities for outcomes'.
- APRA's work on remuneration reform is aimed at achieving: a) stronger incentives for individuals to manage non-financial risks; b) ensuring there are financial consequences when material risk incidents occur; and c) increasing transparency to drive stronger board accountability for remuneration outcomes. Mr Byres said that though there is support for these objectives, there is a spectrum on views on how they should be achieved.
- The revised draft prudential standard CPS 511 Remuneration (you can find our summary of the proposed changes here) maintains APRA's focus on achieving these objectives, but also responds to industry concerns by taking a more principles-based, less prescriptive and more proportionate approach. Mr Byres then ran through some of the key changes in the revised standard - the removal of the hard 50% cap on the use of financial metrics in variable remuneration; shorter deferral periods and increased emphasis on transparency/disclosure - and APRA's rationale for proposing them.
- On the issue of increased transparency, Mr Byres said that new disclosure requirements will be 'defined' through further consultation next year, and that APRA is 'looking at a mix of qualitative and quantitative information being made available so that stakeholders can make a much more informed judgement as to how remuneration is being managed'. Mr Byres suggested that, for significant financial institutions (SFIs) this could including disclosing 'what degree of adjustments to variable remuneration had occurred and allow stakeholders to compare that with financial performance, risk management and conduct outcomes'. APRA will also consider how best to 'collate and publish entity-level data to enable external benchmarking'.
- Mr Byres said that APRA believes that the revised standard 'strikes an appropriate balance between ensuring Australian regulations are not out of line with international and regional peers, but still robust and delivering sufficient skin in the game for a sufficient period of time to allow performance outcomes to be genuinely assessed, and action taken if need be'. As such, he considers that the revised measures in CPS 511 'hold firm to our original objectives that we think are balanced, risk-based and proportionate, and – most importantly – that will deliver a meaningful improvement to remuneration practices compared to years gone by'.

- Mr Byres said that following the four year review, further changes may be made.

Bank capital

- Mr Byres said that APRA believes that the banking system is 'adequately capitalised'.
- Mr Byres made clear that the aim of APRA's reform agenda is not for the industry to raise additional capital, but rather to strengthen the capital regime by: better aligning it with international minimum standards, ensuring standardised disclosure across all banks; providing a simpler framework suitable for small banks with simple business models; adjusting risk weights in a range of areas; and adjusting the mix between minimum requirement and buffers. Mr Byres said that APRA has developed a package of changes that will address these objectives and is set to release it for consultation 'in the next few weeks'.
- Byres said that 'probably the most fundamental change' APRA is proposing is an increase in bank capital adequacy ratios. Mr Byres explained,

> 'Given the amount of capital banks have will be unchanged, lower risk-weighted assets will produce higher capital ratios. However, that does not mean banks will be able to hold less capital overall. I noted earlier that a key objective is to not increase capital requirements beyond the amount needed to meet the 'unquestionably strong' benchmarks. Nor is it our intention to reduce that amount. The balance will be maintained by requiring banks to hold larger buffers over their minimum requirements. What we are effectively doing is changing the unit of measurement for bank capital adequacy. A simple analogy is changing from measuring your height in inches to centimetres – the number of units goes up, but you are no taller. In our case, bank capital ratios will go up, but the dollar amount of capital the banking system has to hold should be largely unchanged'.

Mr Byres said that the change will increase risk sensitivity, make the framework more flexible, underscore the 'fundamental strength' of the banking industry relative to international peer organisations and deliver on the 'unquestionably strong' objective.

Superannuation Data Transformation project

Mr Byres said that APRA is focused on completing the superannuation data transformation project which will significantly increase transparency around product performance. Mr Byres said,

> 'To state the obvious, however, a data-driven approach needs to be built on data. Access to data of sufficient breadth and depth is essential to adequately assess all aspects of the superannuation industry's operations and the extent that trustees are truly delivering for their members. Improving visibility of product-level and investment option-level data beyond MySuper products is required, in addition to more granular and comparable reporting on fees and returns'.

Mr Byres said that the MySuper heatmaps have already demonstrated the value of a 'data driven approach' and added that the government's recently announced Your Future, Your Super reforms will 'take this to another level'.

Mr Byres said that APRA has consulted already on a 'substantial broadening of existing data collections', covering trustee profile, member accounts, performance, asset allocation, insurance arrangements and fees and expenses and that as we move into the COVID-19 recovery phase, finalising the project is a key priority for the regulator. Mr Byres said that APRA's goal is to have 'at least an initial tranche of the new data provided to APRA in September next year'.

[Source: APRA Chair Wayne Byres - Speech to the Australian Financial Review Banking and Wealth Summit 18/11/2020]

Capital framework reforms welcomed by the Customer Owned Banking Association (COBA)

The Customer Owned Banking Association (COBA) has issued a statement welcoming the upcoming consultation on proposed changes to the bank capital framework.

COBA CEO Michael Lawrence said,

> 'The capital framework is critically important to competition and consumer outcomes in banking. The capital treatment of different kinds of home loans is a key focus of APRA's reform agenda and home lending is our sector's core business. The difference in risk weights and therefore capital settings between the major banks and smaller banks has long been a source of competitive distortion. Major banks using the internal ratings-based approach have had advantages over their smaller competitors using the standardised approach to

capital. We welcome APRA's objective of making the capital settings more comparable by making sure all banks disclose a capital ratio under the common, standardised approach. This will improve comparability between the two capital approaches used by banks and provide transparency on the measures that APRA has taken over the last few years to narrow this gap. A critical further step in this process will be setting the 'capital floor' that links the major banks' capital requirements to the standardised approach.'

[Source: COBA media release 18/11/2020]

The system works, but there is room for improvement: Retirement Income Review released

The Final report of the Retirement Income Review (Callaghan Review) was released on 20 November.

The report does not include recommendations, but instead makes a number of detailed findings aligned closely with the review terms of reference.

The intention of the report is to 'contribute to more informed decisions by improving understanding of the operation of the retirement income system with supporting facts and evidence'.

Some key observations

The system works, but there is room for improvement

- Overall, the report concludes that the existing 'retirement income system is effective, sound and its costs are broadly sustainable' but that there are areas where the existing system could be improved.

The Age Pension plays an important role

- The report found that the Age Pension is not just a 'safety net' but instead plays an important role in supplementing the superannuation savings of retirees and enabling them to maintain their living standards; : providing a buffer for retirees whose retirement income/savings fall due to market volatility and supporting those who outlive their savings.

- The report found that the Age Pension, combined with other support provided to retirees, is effective in ensuring most retirees achieve a minimum standard of living in retirement in line with community standards. However, this does not hold true for renters and 'involuntary retirees'.

The system is geared to home-owners

- The report found that 'the home is the most important component of voluntary savings and is an important factor influencing retirement outcomes'. Currently, the system is geared towards/favours home owners eg through the exemption of the principal residence from the Age Pension assets test. The report suggests that if the decline in home ownership among younger people continues, there will be an increasing number of retirees who rent.

There is a need to improve understanding of the system

- The report found that the retirement income system is complex and that this complexity, combined with low financial literacy has resulted some people not 'making the most of their assets' when in requirement/not sufficiently planning for their retirement. For example, the report found that a number of people mistakenly believe that 'retirement income' refers to the return superannuation balances, rather than to drawing down on superannuation savings during retirement.
- According to the report, many retirees are reluctant to dip into their retirement savings. This is attributed to a number of factors including: the complexity of the system and the lack of guidance on how to maximise retirement incomes; reluctance to draw down on 'investments'/'savings'/'nest eggs'; adopting the minimum drawdown rates required for a superannuation account; concerns about possible future health/aged care costs; and concerns about outliving savings.
- The report found that there is a need for 'better information, guidance and good, affordable advice' tailored to individual's needs.

The system needs to have a 'clear objective'

- The report found that there is a need to articulate 'a clear objective for the system, agreed by the Australian community through the government' to guide policy, to clarify the goals of the system and to provide a framework for assessing its performance. The report suggests that this 'clear objective' should be developed around the goal: 'to deliver adequate standards of living in retirement in an equitable, sustainable and cohesive way.'
- The report further suggests that 'what constitutes an 'adequate, equitable, sustainable and coherent' retirement income system needs to be clear and preferably legislated'.

Increasing the superannuation guarantee may not be the best way to improve retirement outcomes?

- The report found that increasing the superannuation guarantee rate 'may involve an unacceptable reduction in living standards prior to retirement, particularly for lower-income earners' based on 'the weight of evidence that increases in the SG [superannuation guarantee] rate result in lower wages growth, and would affect living standards in working life'.
- The report suggests that 'more efficient' use of retirement savings and accessing equity in the home would have a greater impact on improving retirement incomes than increasing the SG rate.
- The report suggests that 'insufficient attention' has been given to assisting people to use their savings more effectively. The report suggests that shifting the focus in retirement planning to income streams rather than balances, facilitating access to better quality and more accessible advice and guidance, and advancing the concept of the Retirement Income Covenant so funds guide members into effective retirement strategies could asssit in this.
- The report observes that superannuation balances could be increased (without increasing the SG rate) through increased focus on fees and raising investment returns to increase superannuation balances (rather than focusing on increasing contributions).

Addressing inequalities in the system

- The current system is geared towards 'full-time, higher-income and continuously employed people' who retire with higher savings balances/receive 'more lifetime government support within the retirement income system' than lower- and middle-income earners.

- The report suggests that measures put forward by stakehodlers to address structural inequalities in the system including: the removal of the $450-a-month threshold when the SG is paid; paying the SG on employer paid parental leave and the government's Parental Leave Pay; giving greater visibility of superannuation balances in divorce settlements; extending the SG earnings base to include overtime; and ensuring people receive the SG they are entitled to, such as by paying the SG at the same time as wages and better enforcing sham contracting laws are likely to have only a 'small' impact in practice.
- The report found that the design of superannuation tax concessions increases inequality in the system, as they provide greater benefit to people on higher incomes.
- There are areas where superannuation tax concessions are not a cost-effective way to help people achieve adequate retirement incomes. For example, the cost of the earnings tax exemption in retirement will grow faster than the growth in the economy as the system matures and delivers the greatest benefit to high-income earners.

Confirmation of the government's policy direction

Announcing the release of the report, Treasurer Josh Frydenberg, Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume and Minister for Families and Social Services Anne Ruston said that it has 'established a fact base that will improve understanding of how the retirement income system operates, better informing public policy and the retirement outcomes delivered to Australians'. The statement says that the government will 'carefull consider' the review findings together with related reports)the Aged Care Royal Commission and remaining recommendations of the Productivity Commission's report into Superannuation).

The statement welcomes the findings as confirmation of the government's 'policy direction' with respect to:

- the importance of increasing the efficiency of the superannuation styem: Ms Hume said that a key focus of the government's 'Your Future, Your Super' reforms is lowering fees and improving returns
- increasing home-ownership rates: Ms Hume said that the government is also focused on lifting rates of home ownership through the First Home Loan Deposit Scheme, First Home Super Saver Scheme and HomeBuilder.

Superannuation guarantee?

The statement includes no comment on the scheduled increase in the superannuation guarantee rate beyond noting the observation in the report that more efficient use of savings in retirement could have a bigger impact on improving retirement income than increaing the superannuation guarantee rate.

> [Sources: Retirement Income Review – Final Report; Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume media release 20/11/2020]

Superannuation: ASFA calls on the government to address the structural causes behind the superannuation gender gap

The Association of Superannuation Funds of Australia (ASFA) has called on the government to address the systemic issues responsible for the inequality between men and women in average retirement balances.

ASFA CEO, Dr Martin Fahy commented,

> 'It is not the rate of the Superannuation Guarantee (SG) that creates inequality in women's super. What produces inequitable outcomes is that often women have broken working patterns, work part-time and tend to be lower paid. Structural issues such as the $450 per month threshold for SG, not receiving super during paid parental leave, practical difficulties with family law and super splitting and no compulsory super for the self-employed, all serve to leave women worse off in retirement."

Dr Fahy said that abolishing the $450 a month SG threshold and extending compulsory superannuation to the self-employed, as long advocated for by ASFA, would go some way to addressing these issues.

> [Source; ASFA media release 19/11/2020]

ASIC Report 673: Report finds that 30% of people are confused about insurance in superannuation and suggests that better information on fund websites could help

As part of a broader project to improve trustee practices around insurance in superannuation, the Australian Securities and Investments Commission (ASIC) has released a report - Report 673 Consumer engagement in insurance in super (REP 673) - prepared by Susan Bell Research outlining the findings of research into direct member engagement with insurance in superannuation.

The research focused on the experiences of members who elected to engage with their fund directly to seek information about their insurance arrangements, or to make changes to their insurance without the help of a financial adviser. The findings are based on 50 qualitative interviews with superannuation members conducted in May-June 2020.

Why 30% of members are confused about insurance in superannuation

- The headline finding in the report is that a third of members interviewed said that they were overwhelmed, confused or uncertain after their interaction with their fund and found insurance complex and difficult. In addition, some members indicated that they felt disempowered by the experience.
- 'About half' members did not achieve the goal they set for themselves before they commenced engaging with their fund.
- Some members seeking basic factual information about their insurance arrangements assumed that the process would be straightforward and simple 'self-service' process, but found that was not the case. The information they were seeking was not readily accessible on fund websites.
- Some were overwhelmed by the complexity of information presented to them in response to initial queries, because they found it difficult to understand/did not how to respond to it. This led them to feel that they were left in 'limbo'.
- There is confusion among members about what constitutes 'advice'. Though some members were observed to want advice (though they did not describve their queries in that way) they seemed to have 'only a vague idea about how superannuation funds give information or provide advice and did not appear to understand the demarcation between the two. When they did not receive the guidance they expected, they were left disappointed and unsure what to do next'.
- Those who were the most satisfied with interactions, tended to be those who could achieve their object through one interaction with the fund, most usually by finding the information on the funds' website.

Potential improvements to address these issues

The report states that there is a 'general expectation' among members that superannuation fund websites will provide them with the factual information they're looking for. The report observes that many of the issues experienced by members could 'probably have been avoided if the member had known where to fund the information that they needed on the website, and if it was easy to understand'.

The report suggests that the 'challenge is for the super funds to prioritise a straightforward approach to answering the most common questions and to test the usability of their approach'.

The report offers no recommendations, but does flag eight potential improvements which could help improve members' experience – mostly, by ensuring that clear, easily understandable information is readily accessible to members via fund websites.

- Providing members with answers to the most commonly asked questions about insurance in superannuation. These questions include: the differences between the insurance products on offer; the difference between insurance inside and outside of superannuation; whether it is possible to claim on more than one policy; changes in insurance needs at different life stages; and the implications of pre-existing conditions on switching.
- Providing calculators on fund websites to enable people to work out how much cover they need/how much it would cost.

- **Reminding members to check their insurance cover** when changing jobs, at different life stages, or when starting a new fund.
- **Providing case studies on websites 'perhaps in a more journalistic style than in PDS style'** to assist members in understanding the information on fund websites about the different policies/how members can find out what they are covered for and to assist them in completing the task they had set out to do eg increasing/decreasing/cancelling their cover.
- **Making customer support staff available** to guide members over the phone, through website processes eg cancelling cover.
- **Ensuring members understand 'the demarcation between general information and "advice"'.** The report observes that currently, members do not appreciate the distinction between the two, and therefore do not know when they need an adviser.
- **Funds should make the process of gaining access to advice clearer** as many members assumed that if the call centre was unable to answer their question, 'then there is no one else to ask'.
- **Promoting greater understanding/use of MoneySmart.**

Next steps

- ASIC encourages trustees to consider the issues raised in the report and what actions they can take to address them.
- ASIC states that it will 'communicate further about its work, examining default settings on occupational categories and analysing the value for money delivered to members. ASIC continues to engage with industry on implementation of the Insurance in Superannuation Voluntary Code of Practice'.

[Sources: ASIC media release 20/11/2020; Report 673 Consumer engagement in insurance in super (REP 673)]

COVID-19: So far funds have paid out $35.2 billion under the government's early release of superannuation scheme

The Australian Prudential Regulation Authority (APRA) has released industry-level and fund-level data on the early release of superannuation scheme for applications received during the period 20 April (inception of the scheme) to 15 November 2020.

- Total payments made since the inception of the scheme have taken an average of 3.3 business days to process, with 95% of payments made within five business days.
- Over the week to 15 November, superannuation funds received 18,000 applications (down from 25,000 applications in the week to 8 November).
- Of the applications received in the week to 15 November, 12,000 were initial applications bringing the total number of initial applications received to date to 3.3 million since inception of the scheme.
- 6,000 applications were repeat applications, bringing the total number of repeat applications to 1.4 million since the inception of the scheme.
- Over the week to 15 November funds made payments to 21,000 members worth $151 million (down from $160 million the previous week).
- Funds have made approximately 4.6 million payments since inception worth a total of $35.2 billion paid since inception.
- The average payment made over the period since inception is $7,653 overall and $8,319 when considering repeat applications only.

[Source: APRA media release 23/11/2020]

Payment systems review: Issues paper released

Context

As part of the government's JobMaker Digital Business Plan, the government announced a review of the regulatory architecture of the payments system to ensure it remains fit-for-purpose and capable of supporting continued innovation.

Broadly, the review will consider:

- the appropriateness of existing governance and regulatory oversight mechanisms including whether the existing framework 'adequately accommodates new and innovative systems and the effectiveness of the current structure in implementing government policy'
- how to 'create more productivity-enhancing innovation and competition in the payments system, including in relation to the pace and manner in which the New Payments Platform is being rolled out and enhanced by industry'
- how to improve consumer/business understanding of alternative payment methods
- the extent to which existing government payment systems could be enhanced
- international developments/trends and how Australia should respond to ensure it remains internationally competitive.

The full terms of reference are here.

The review is being led by Scott Farrell and is due to report to the government by April 2021.

The review is separate from the review being undertaken concurrently by the Reserve Bank of Australia into Retail Payments Regulation.

Issues paper released

On 20 November, Treasury released an issues paper seeking feedback on the issues raised in the terms of reference. The paper includes 11 specific questions:

- Whether the existing 'regulatory architecture' underpinning Australia's payments system 'facilitates the development of an overall vision, strategy and principles for the Australian payments system'
- How the regulatory architecture underpinning the system can best balance the need for effectiveness for end users with the management of risk and efficiency in the payment system.
- Views on the appropriate balance between self-regulation, formal regulation and government policy in order to ensure the payment system works in the best interests of end users.
- Whether there are gaps and/or duplication in the current framework
- How the regulatory framework should be designed to best facilitate the coordination of participants and regulators to meet the requirements of end-users
- Whether changes are needed to existing structures/roles/mandates involved in the governance of the system to ensure it remains fit for purpose (and able to support innovation)/meets the needs of end-users
- Views on what 'regulatory architecture' is needed to 'provide support and clarity for businesses – particularly new entrants – to invest and innovate in our payments system'
- Views on how the 'regulatory architecture' can enable payment system participants to make better use of data to improve cross-border payments and other payments that benefit end-users.
- Views on the need for education for end-users (consumers/businesses) about payments and who should provide it given the rapid changes in the system
- How Australia's framework compares with other jurisdictions 'particularly as it relates to the encouragement of innovation and competition'

- What lessons from international experiences could improve Australia's framework and ensure responds effectively to new developments in the future for the benefit of end-users.

Timing

The deadline for submissions is 31 December 2020.

[Source: Payments Systems Review Issues Paper 20/11/2020]

Views sought on the best way to accelerate Peppol e-invoicing adoption

Context

- Australia adopted the Pan European Public Procurement On Line (Peppol) framework – a framework for e-invoicing and procurement used in 30 other countries – in 2019. The framework is expected to deliver significant efficiency and cost benefits to business including enhanced invoice processing efficiency and accuracy. However, to date, voluntary adoption of the framework has been 'modest' in both the public and private sectors.
- In the recent federal budget 2020-21 the government flagged plans to accelerate e-invoicing adoption through funding for the ATO (in its role as the Peppol Authority) to continue working with all levels of government, with the aim of encouraging adoption and assisting with implementation of Peppol e-invoicing. The government also announced that it will mandate that all Commonwealth government agencies must be able to receive Peppol e-Invoices by 1 July 2022 as a further means of accelerating adoption.

Consultation on the best way to accelerate adoption

The government has released a consultation paper seeking feedback on the perceived barriers to Peppol e-invoicing, the costs/benefits of mandating Peppol e-invoicing and views on three proposed options to accelerate adoption.

The three proposed options are summarised in the table below.

OPTION	DETAILS	SPECIFIC QUESTIONS FOR FEEDBACK
Option 1: Mandating adoption by all businesses ▪ The introduction of a new mandatory requirement for ALL businesses to be able to send/receive Peppol einvoices. ▪ The new requirement would be rolled out to large businesses first. ▪ Were this option adopted, it would not prevent businesses from sending/receiving non Peppol invoices such as	▪ The issues paper suggests that this approach will accelerate e-invoicing adoption and therefore also bring forward the associated benefits for business. ▪ Definition of 'large business': It's suggested that large business could be defined for this purpose by adopting the same threshold as is set out in the Payment Times Reporting Act 2020 (ie $100 million turnover); or adopting the definition of a large/medium taxpayer for the tax agent lodgement program ($10 million turnover); or adopting other existing definitions; or creating a new definition. ▪ Phased approach: Adopting a phased approach to implementation would also allow, it's suggested, more time for smaller businesses to plan; allow software/service providers more time to 'develop affordable solutions for a greater variety of clients'; and allow smaller businesses to adopt e-invoicing when there are more users to exchange einvoices. ▪ The issues paper also observes that this option could impose 'significant regulatory costs on businesses' eg costs of changes to their software or systems.	Feedback is sought on the following specific questions: ▪ How 'large business' should be defined for this purpose ▪ Views on the appropriate timeline for large businesses to comply with the new requirement ▪ Views on the appropriate timeline for other businesses to comply ▪ Whether there should be any exemptions from the requirements ▪ If certain small businesses were exempted, how this class of business should be defined.

OPTION	DETAILS	SPECIFIC QUESTIONS FOR FEEDBACK
paper and PDF invoices.		
Option 2: Mandating adoption by large businesses only .	▪ This option would require only large businesses (as defined under Option 1) to have the ability to send and receive Peppol einvoices. ▪ It's suggested that requiring larger businesses to adopt Peppol invoicing would in turn drive broader adoption while not imposing an undue regulatory burden on small businesses. ▪ However, the paper suggests that limiting the requirement to large businsses may result in fewer e-invoicing products aimed at the SMEs.	Feedback is sought on the following specific questions ▪ How large business should be defined for this purpose ▪ Views on the appropriate timeframe for large businesses to comply
Option 3: Adoption a non-regulatory approach	▪ It's suggested that take up of Peppol e-invoicing could be increased through raising awareness about the benefits eg through awareness raising by the public and private sector and the Peppol Authority and/or through the adoption of a private sector voluntary Code. ▪ The issues paper observes that this approach would place no regulatory burden on businesses and could be implemented quickly. ▪ The consultation paper also observes that this option may be less effective than other options in driving increased adoption. Based on international experience, even with a mandate for the public sector, it could still take many years for Peppol e Invoicing to be widely adopted across the economy.	▪ Feedback is sought on whether there are any specific non-regulatory actions that the government should take.

The paper also seeks feedback on the impact that mandating e-invoicing would have (if any) on reducing payment times from large to small businesses payment times and what other actions the government could take to reduce payment times.

Timing

The due date for submissions is 18 January 2021. Treasury states that the consultation may also involve conducting further 'targeted consultation' with key stakeholders on specific issues where more information and views are required.

[Source: Consultation: Options for mandatory e-Invoicing adoption by businesses]

Corporate Misconduct and Liability

Top Story | Reforms needed to clarify corporate criminal liability

Following the ASIC Enforcement Review Taskforce in December 2017, and the Financial Services Royal Commission in February 2019, the Australian Law Reform Commission (ALRC) issued Report 136 in August 2020, in which it made substantial recommendations for the reform of corporate criminal liability.

MinterEllison Partner Mark Standen, Professor Pamela Hanrahan (UNSW Business School), Dr Olivia Dixon (Law Faculty, University of Sydney), and Professor Dimity Kingsford Smith, UNSW MinterEllison Chair in Risk and Regulation participated in a recent panel discussion, reflecting on the proposed changes and the possible implications.

You can access a summary of the discussion and a recording on our website here.

Risk Management

Privacy, Technology and Cybersecurity

Top Story | Release of the Privacy Act Review Issues Paper

On 30 October 2020, the Attorney-General's Department published the Privacy Act Review Issues Paper, which outlines issues at the heart of the current privacy regime in Australia.

MinterEllison's team has released an article discussing their key takeaways.

You can find the full text of the article here.

Climate Risk

Putting Australia's Financial system on a sustainable footing: The Australian sustainable finance initiative has released a roadmap to net zero

Key Takeout

- The Australian Sustainable Finance Initiative (AFSI) – a coalition of 180+ organisations including banks, insurers, superannuation funds and investment managers – has called on the financial sector to implement a plan to transition the economy to a more sustainable footing and has released a roadmap for achieving it.
- Broadly, the Roadmap calls on financial system participants to embed sustainability into their organisations and decision-making and to support the transition of the economy to net zero emissions by 2050.
- The roadmap recommends that AFSI will be established a permanent body to drive delivery of the roadmap, starting in 2021.

The Australian Sustainable Finance Initiative, a coalition of over 80 organisations across Australia's financial system have released a roadmap 'for aligning Australia's financial system with a sustainable, resilient and prosperous future for all Australians'.

The roadmap includes 37 recommendations aimed at achieving four broad objectives: a) embedding sustainability into leadership; b) integrating sustainability into practice; c) enabling resilience for all Australians and d) building sustainable finance markets.

A steering committee including representatives from major banks, insurers, investors and civil society representatives guided the development of the roadmap with support from the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) in observer roles.

Announcing the release of the roadmap AFSI Co-Chair Jack Johnson said that the plan will ensure Australia remains globally competitive into the future.

> 'It provides a path towards a financial system that is better prepared to face future risks and shocks, such as a changing climate; to meet the current needs of Australians while delivering on long-term needs for a sustainable future; to enhance financial inclusion and well-being of all Australians, including our most vulnerable; and to direct capital to where it is most needed. Many of the challenges that Australia faces are global in nature and, beyond our borders, a major international shift is underway shaping capital flows. There is an urgent imperative for Australia's financial services sector to act to remain globally competitive in a world increasingly prioritising a sustainable economy. We are seeking to re-orient capital – where capital is lent, what it insures and where it is invested – to supporting and building value today while strengthening the economic, natural and social assets that underpin our long term prosperity'.

Key actions include the following.

Recommendations 1-8 are aimed at embedding sustainability into leadership. They include:

- Aligining remuneration structures with sustainable long-term value creation. This could include giving consideration to tying achievement of sustainability targets to remuneration/incentive practices and/or rewarding sustainability performance/leadership through promotion decisions (recommendation 4).
- Establishing the Australian Sustainable Finance Initiative (ASFI) as a permanent body to drive delivery of the roadmap (recommendation 5).
- Recommendation 6 recommends the establishment of a First Peoples Financial Services Office, to be led by Aboriginal or Torres Straight Islander people, to facilitate egagement between financial system participants and Indigenous communities and organisations.
- Recommendation 7 recommends hardwiring the principles of 'free, prior and informed consent' for Indigenous people into financial institution decision making.

Recommendations 9-21 are aimed at 'integrating sustainability into practice'. They include:

- Requiring financial institutions with annual consolidated revenue of more than $100 million to report according to the TCFD recommendations by 2023 on an 'if not, why not' basis (recommendation 11).
- Requiring all ASX listed companies, sarting with ASX 300 companies, to reporting in line with the TCFD recommendations by 2023 on an 'if not, why not' basis (recommendation 12).
- Mandating sustainability reporting and assurance for listed entities and for unlisted assets wholly owned by financial institutions (recommendation 15).
- Requiring financial institutions to undertake scenario analysis and stress testing (recommendation 16).
- Expanding APRA's vulnerability assessments to include fit-for-purpose assessments for small and medium financial institutions across Australia, as well as the superannuation and insurance sectors (recommendation 17).
- Financial system participants develop stewardship codes to 'harmonise and enhance stewardship practices' (recommendation 21)

Recommendations 22-30 are aimed at 'enabling resilience for all Australians'. They include:

- To ensure consumer access to consistent labelling/disclosure of the sustainability of financial services products, financial system participants support the development of labelling standards (recommendation 27).

- Enabling Australians to make financial decisions based on their values and sustainability preferences through, among other things, ensuring financial advisers (human and robot), superannuation funds, accountants and platforms consider the sustainability preferences of consumers (recommendation 28).

Recommendations 31-37 are aimed at building sustainable finance markets. They include:

- To support individual financial institutions to make net-zero aligned decisions on lending, insurance and investment, financial institutions will collaborate through AFSI to establish 'interim science based targets and trajectories to align and facilitate the transition to net zero emissions by 2050' (recommendation 31).
- Australia's financial system participants 'produce a regular report that considers whether Australia's sustainable finance markets are functioning efficiently to support the delivery of net zero emissions by 2050, consistent with science-based targets' (recommendation 33).

Timeline

The Roadmap includes an Action Plan (page 74), setting out the timelines for implementation of each of the recommendations starting immediately. The roadmap includes short term actions (2021-22), medium term actions (2023-2025) and long term actions (2026-2030).

ASFI plans to release further details around implementation in early 2021.

[Sources: Australian Sustainable Finance Initiative media release 24/11/2020; The Australian Sustainable Finance Roadmap report]

In Brief | Climate Action 100+ has expanded the focus list of companies following a periodic review to ensure the companies engaged remain relevant to confronting the global climate change crisis. Overall, nine companies have been added to the list, while two have been removed. The net rise in companies engaged globally through Climate Action 100+ takes the total to 167

[Source: Climate Action 100+ media release 18/11/2020]

Top Story | Time for business to prioritse ethics: The Governance Institute has released its latest annual Ethics Index

Key Takeouts

- The Governance Institute's latest Ethics Index has identified that the financial services sector and the corproate sector more broadly have work to do to improve perceptions of their behaviour. For example:
  - the financial services sector was rated the least ethical of all sectors
  - financial services and social media organisations dominated the list of the most unethical organisations overall
  - CEOs, Chairs, Managing Directors, senior executives and directors of foreign companies operating in Australia and mortgage brokers were ranked amoung the top ten least ethical occupations.
- 90% of Australians believe Australia has an ethical obligation to act on climate change. Of this group, 45% believe Australia has an urgent ethical obligation to take climate action. Similarly, 90% of respondents believe Australia has an ethical obligation to transition to renewable energy.

Some Interesting Findings

The Governance Institute's fifth annual Ethics Index tracks changes in public attitudes to the importance of ethics generally and also changes in public perceptions around the extent to which certain groups can be trusted to behave ethically.

The findings are based on a survey of 1000 people conducted during 1-13 October 2020.

People believe Australian society is overall more ethical than they did last year?

Overall, perceptions of how ethical Australian society improved as compared with 2019 with the Governance Institute's overall metric for measuring this improving by 15 points from 37 in 2019 to 52 in 2020.

The ethical expectation deficit which the Governance Institute explains as 'the difference between the level of ethical behaviour we want to see and the actual level of ethical behaviour' also improved from -45 in 2019 to -29 in 2020 (the lowest it has been in the five years of the survey).

Commenting on this shift, Governance Institute CEO Megan Motto suggested that it could be attributed to the hardships of the past year - 'It seems that a year of hardship, in which co-operation, trust and transparency have become paramount, has changed our perceptions around how we function as a society' she said.

Climate action is ranked among the top ethical challenges facing Australia

- Top five greatest short term ethical challenges: Respondents nominated the following issues as the top five greatest ethical challenges facing Australia in the next 12 months: 1) balancing personal freedoms with COVID control (44%); 2) reducing our reliance on global supply chains (33%); 3) aged care reform (32%); 4) climate change action (28%); and 5) balancing fire hazard reduction with conservation (27%). Bushfire management via fuel reduction was also included among the top five challenges facing the country 'in future'.
- Top five greatest 'future' ethical challenges: The top five most difficult ethical challenges facing Australia were nominated as: 1) euthanasia (40%); 2) immigration (40%); indigenous affairs (35%); 4) the 'business practices of foreign companies operating in Australia' (32%) and 5) foreign investment in Australia (31%).
- Climate risk: 91% of respondents believe Australia has an ethical obligation to act on climate change. Of this group, 45% believe Australia has an urgent ethical obligation to take climate action. Similarly, 90% of respondents believe Australia has an ethical obligation to transition to renewable energy.

The financial services and corporate sectors have work to do...

Financial services/corporate occupations were nominated as the least ethical occupations overall:

- The ten least ethical occupations were: 1) mortgage brokers; 2) lawyers; 3) CEOs/Managing Directors; 4) Chair of companies; 5) senior executives; 6) local politicians; 7) state politicians; 8) real estate agents; 9) federal politicians; and 10) directors of foreign companies operating in Australia.
- Company secretary remains the occupation with highest ethical score in the corporate sector.

- Directors of foreign companies continue to have the lowest ethical score (-4%).

The financial services sector was rated the least ethical of all sectors

- The financial sector has the lowest ethical score of all sectors (18). The report comments that this is nevertheless an improvement on 2019 when the score was -11.
- Within the sector, all occupations and almost all organisations have seen an improvement on 2019.
- Industry superannuation funds are perceived to be the most ethical of all organisations in the sector. Pay day lenders are perceived to be the least ethical.
- Overall, financial services and social media organisations dominated the list of the most unethical orgnisations overall: The top ten least ethical organisations were nominated as: 1) 'Other insurance companies'; 2) investment banks; 3) retail banks; 4) life insurance companies; 5) foreign companies operating in Australia; 6) Instragram; 7) Twitter; 8) Facebook; 9) Tik Tok and 10) pay day lenders.

Commenting on these findings, the Governance Institute suggests it's an indication that business needs to prioritise ethics. Ms Motto said,

> 'Ethics matter, in business and in society. Our survey shows that the perception of the finance industry in Australia is still recovering from the banking royal commission and other scandals, and the media is suffering the same crisis of legitimacy here as overseas. These perceptions have consequences, and our leaders need to get to work addressing them'.

Attitudes to COVID-19 measures

- **Support for COVID-19 restrictions:** Most respondents expressed support for government COVID-19 restrictions. including lockdowns, the closure of international and state borders and mandatory mask wearing. In contrast, most respondents vie a 'herd immunity approach' which they see as unethcialIn contrast, there is significant resistance to a herd-immunity.
- **Support for COVID-19 some workplace safety measures:** Similarly, there was strong support for some workplace COVID-19 safety measures. For example, 60% of respondents supported employers requiring employees to wear mask in the office. However, other measures such as monitoring employees working from home using surveillance technology was not generally supported (30%)

[Sources: Governance Institute media release 24/11/2020; 2020 Ethics Index; Governance Institute key points briefing note]

Other News

In Brief | COVID-19: The RBA has released a paper confirming that JobKeeper saved 700,000 jobs and kept those who were self-employed in business, Treasurer Josh Frydenberg has welcomed the findings

[Sources: Treasurer Josh Frydenberg media release 24/11/2020; Reserve Bank of Australia media release 24/11/2020; Full text report: How Many Jobs Did JobKeeper Keep?]

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