A woman with curly hair is looking down at a tablet computer in a dimly lit office. The background is blurred, showing office equipment and lights. The text is overlaid on the left side of the image.

# Governance News

## COVID-19 Special Edition

28 October 2020

# Contents

|   |           |
|---|-----------|
| <b>Boards and Directors</b>   | <b>4</b>  |
| Top Story   Sticking with who you know (regardless of performance)? A report from Ownership Matters questions whether the current approach to board recruitment and board refreshment is in the best interests of shareholders .....  | 4         |
| In Brief   US News reports that the US State Department has suspended all diversity training to enable the Department and Office of Personnel Management to review the program content. This follows the release of September memorandum to the heads of executive branch agencies notifying them of the President's directive to 'cease and desist from using taxpayer dollars to fund...divisive, un-American propaganda training sessions' ..... | 6         |
| <b>Remuneration</b> ____  | <b>7</b>  |
| Goldman Sachs has agreed to pay a record fine to resolve various investigations into risk management failures in connection with 1MDB, the firm is also seeking to cut or clawback a total of \$173 million from former executives/executives .....   | 7         |
| <b>Disclosure and Reporting</b>   | <b>8</b>  |
| Quality reporting is more vital than ever: The FRC has called on companies to step up the quality of their reporting in light of the 'heightened need for high-quality disclosures as a result of the Covid-19 pandemic' .....  | 8         |
| <b>Meetings and Proxy Advisers</b>  | <b>9</b>  |
| Top Story   Jumping the gun on virtual meetings? .....  | 9         |
| Recent AGM results: Crown, Worley, Webject, IAG, Qantas .....   | 11        |
| <b>Corporate Social Responsibility and Sustainability</b>   | <b>16</b> |
| New evidence that behaving ethically delivers financial dividends? Research commissioned by the Ethics Centre has found that there is significant financial gain to be had by raising (even relatively slightly) ethical standards .....  | 16        |
| In Brief   Making ESG a priority: McKinsey has published an interview with South32 Chair Karen Wood discussing her role as Chair and how it has been impacted by the pandemic, the steps South32 is taking to prepare for a low-carbon world and 'what makes the company's purpose and strategy resilient in unpredictable times' .....   | 16        |
| <b>Regulators</b>   | <b>17</b> |
| The Treasurer has ordered a four week independent review into issues flagged by the Auditor General concerning certain ASIC expenses and approval processes, ASIC Chair James Shipton has temporarily stepped down pending the outcome, ASIC Deputy Chair has resigned .....  | 17        |
| APRA's appearance before the House of Representatives Standing Committee on Economics: Key takeaways from the hearing .....   | 19        |
| <b>Financial Services</b>   | <b>25</b> |
| Top Story   Order up! ASIC expands its menu of product intervention orders .....  | 25        |
| The government has launched a review into the regulatory architecture of the Australian payments system .....   | 25        |
| Status update on the ALRC review into the legislative framework for corporations and financial services regulation .....  | 26        |
| Invest in stress testing capability: APRA's view of the impact of COVID-19 on private health insurers .....   | 26        |



|  |           |
|--|-----------|
| The growth of Australia's fintech industry is a key government priority says Senator Hume.....   | 27        |
| Full compliance with design and distribution obligations is expected from day one, ASIC Commissioner Sean Hughes tells the Annual Credit Law Conference .....  | 29        |
| COVID-19: So far funds have paid out \$34.4bn under the government's early release of superannuation scheme, the data indicates that the number of applications coming through continues to slow .....   | 31        |
| In Brief   APRA has published new frequently asked questions relating to the Superannuation Data Transformation.....   | 31        |
| In Brief   Proposed revisions to the credit risk management framework for ADIs: APRA is consulting on proposed changes to Reporting Standard ARS 220.0 Credit Risk Management to align it with the final version of Prudential Standard APS 220 Credit Risk Management released in December 2019. Submissions are due by 28 January.....   | 31        |
| <b>Risk Management</b>   | <b>32</b> |
| The government has launched a four week investigation into Australia Post and directed the CEO to temporarily step down from her role pending its completion .....   | 32        |
| In Brief   Why weren't these issues picked up sooner? Writing in The AFR, Swinburne Law School's Helen Bird suggests that the recent scandals at Australia Post and separately at ASIC point to failure of the system of existing controls and oversight of the two bodies. 'The optics have been poor, but the governance of important government institutions and enterprises, including Treasury, has been shown to be poorer. What has let them down is a less-than-stellar approach to remuneration entitlements. Both the Australian public and the public purse are entitled to expect better' she writes ..... | 33        |
| In Brief   The Bribery Prevention Network – a group of Australia's top ASX-listed companies, government organisations and civil society organisations - have launched a website offering free resources to assist Australian companies to manage bribery and corruption risks in domestic and international markets .....  | 34        |
| <b>Other News</b>  | <b>34</b> |
| Investment and M&A trends in the infrastructure industry [Part 1] .....  | 34        |



# Boards and Directors

## Top Story | Sticking with who you know (regardless of performance)? A report from Ownership Matters questions whether the current approach to board recruitment and board refreshment is in the best interests of shareholders

### Key Takeouts

- Ownership Matters has released a report entitled, [Many are called, few are chosen](#), tracking ASX 300 board appointments and departures, tenure, gender composition and company performance, based on data over the 2005-2020 period.
- Key findings include that: a) new director appointments tend to be drawn from the existing pool of ASX 300 directors (seemingly) regardless of their previous record; b) boards have become more gender diverse, but female directors are 'disproportionately' more likely to be appointed from among the pool of service ASX 300 directors; c) the more seats a director holds, the longer their tenure is likely to be; and d) average director tenure tends to be 'lengthy' and appears unrelated to company performance.
- The report questions, in light of this, whether the current approach to board refreshment/performance assessment is in the best interests of shareholders.

### Overview

Ownership Matters has released a [report](#) tracking the composition of ASX 300 boards together with share price returns during the period of director service, over the period 2005-2020.

A headline conclusion of the report is that boards tend to prefer 'known' candidates (candidates who already hold an ASX 300 board seat) seemingly regardless of the directors' prior record/effectiveness. This appears to be especially true of female directors, who the report found are 'disproportionately' more likely to be recruited from within the existing pool of ASX 300 directors.

In addition, the report found that based on high average endorsement rates – according to the report, non executive directors standing for election/re-election receive an average vote of 96% in support - shareholders are reluctant to vote against incumbent non-executive directors regardless of continued underperformance in the companies they serve.

The report suggests that based on the findings in the report, investors should ask questions about whether the current approach to director recruitment and board refreshment are best serving their financial interests.

'Investors should question whether the current systems used to select boards preference incumbent ASX 300 directors, irrespective of gender, at the expense of other merit-based candidates. Our analysis presents evidence that NED tenure is lengthy and that board turnover in the last 15 years is largely independent of company performance. If a high performance culture does not exist in the board, investors should ask how one can prosper within the company's workforce?'

### Some Interesting Findings

**Boards have become more gender diverse, but female directors tend to be drawn from the pool of serving ASX 300 directors**

- Uptick in the number of female directors: Women account for 33.1% of ASX 300 board seats as at 30 June 2020, up from 9.6% in 2005.
- The number of female executive directors has remained flat over the period: According to the report there are currently more executive directors named either Michael or Mark than all women in executive director roles in ASX 300 companies. Women account for only 6% of executive director roles, a figure that has remained virtually unchanged over the period.

### Director appointments





- Since 2005, close to 40% (38.2%) of directors were recruited from the pool of directors who already hold at least one ASX 300 board seat. In the year to 30 June 2020, 36% of directors were appointed from among the existing ASX 300 director pool.
- The report found that women are 'disproportionately' more likely to be appointed from within the existing ASX 300 director pool than their male peers. For example, during the 3 years to June 2020 approximately 40% of the existing pool of women directors accepted an appointment to an additional board (generally a smaller company) whereas for men, during the same the same period, the level was 17.5%.
- According to the report, over the last three years the pool of women who are selected as first-time candidates to be ASX 300 directors is not growing at the same rate as the opportunity for women to be ASX 300 directors.

### Director workload

- Women directors are serving on (slightly) more boards than they have in the past, while men are serving on (slightly) fewer. According to the report, women were serving on 1.3 boards each in 2009 as compared with 1.45 seats now. In contrast, in 2009 men served on 1.23 seats, declining to 1.18 now.
- 5% of all female directors hold four or more board seats. In contrast, 16 men or 1.7% of male directors hold four or more board seats. However, when adjusted for the increased workload of chairpersons (assuming one chair is the equivalent of two board seats) this changes: 65 men have a workload of four or more board seats, compared to twenty-eight women.

### Tenure

- The report found that overall, gender makes little difference in terms of board tenure up to the ten year mark. However, directors have been in their roles for over ten years, this changes. As at 30 June 2020, 18% of male non executive directors (208 in total) had been in their roles for more than ten years. In contrast, only 2% of female non executive directors fall into this category.
- The report identified a 'strong association' between the number of board seats held by individual directors and time served as a director (overall) on ASX 300 boards. That is, the more seats a director holds, the longer their tenure is likely to be. Non executive directors that have at least one appointment as a Chairperson have an average ASX 300 service that is just over 4 years longer than non-executive directors without a Chairperson appointment.
- Directors who serve on companies with larger market capitalisation are more likely to have multiple board commitments.

### The link between board turnover and financial performance?

The report comments that there is 'little meaningful difference in the board turnover rates between companies that outperform compared to those that underperform'.

- Turnover of all ASX 300 board seats regardless of the financial performance of the company has averaged 12.75% per year over the last 15 years. The rate of board turnover at the worst financial performers (ie companies that recorded total shareholder return in the bottom decile of the ASX 300 in any year between 2005-20) was slightly higher with an average of 19% of board seats turning over the year after the very poor performance was recorded.
- Financial performance appears to have little impact on director retirement: The report found that an individual director serving on a company that recorded total shareholder return in the bottom decile of the ASX 300 in any year between 2005-20 had a 21% chance of retiring the following year (17% for chairpersons) as compared to an average 14% chance of retirement across all other performance deciles (10% for chairs).

The report comments that based on the strong endorsement rate – non executive directors standing for election/re-election receive an average vote of 96% in support - shareholders are reluctant to act against incumbent non executive directors regardless of continued underperformance in the companies they serve.

The report suggests that this could be due to various factors including: a) lack of specific/useful information about individual director aptitude/effectiveness/contribution; and b) the fact that Australian directors do not face annual elections as they do in the UK.

[Source: Ownership Matters report: Many are called, few are chosen]

In Brief | US News reports that the US State Department has suspended all diversity training to enable the Department and Office of Personnel Management to review the program content. This follows the release of September memorandum to the heads of executive branch agencies notifying them of the President's directive to 'cease and desist from using taxpayer dollars to fund...divisive, un-American propaganda training sessions'

[Sources: US News 24/10/2020; Memorandum 04/09/2020]



# Remuneration

---

## Goldman Sachs has agreed to pay a record fine to resolve various investigations into risk management failures in connection with 1MDB, the firm is also seeking to cut or clawback a total of \$173 million from former executives/executives

Goldman Sachs has agreed to pay \$3.3bn in fines to the US Department of Justice and to other regulators in the US, UK, Singapore and Hong Kong, to resolve investigations into risk management failures in connection with 1MDB.

### Clawbacks and pay cuts

In a [statement](#), Goldman Sachs said that though none of the past or current members of senior management were involved in/aware of the firm's participation in 'any illicit activity' the board has nevertheless determined that it is,

... 'appropriate in light of the findings of the government and regulatory investigations and the magnitude of the total 1MDB settlement that compensation for certain past and current members of senior management be impacted'.

### Details

According to the statement Goldman Sachs is seeking a total of \$173 million in clawbacks, forfeitures and compensation reductions.

- **The firm is seeking to clawback \$76 million from three former employees implicated in the illicit activity:** Goldman Sachs states that it has 'undertaken clawback actions to the full extent of its contractual entitlements' with respect to three former employees who were implicated in the illicit activity one of whom has pleaded guilty to criminal charges, another who is facing the same charges; and a third who has been prohibited by the Federal Reserve from participating in the banking industry. The firm is seeking that the three former employees forfeit a total approximately \$76 million. To date, \$24 million has been forfeited.
- **The firm is calling for five former executives to forfeit approximately \$67 million:** 'In acknowledgement of the Firm's institutional failures' Goldman Sachs is calling on five former executives - the former CEO, the former COO, the former CFO, the former Vice Chair who was also a CEO of Goldman Sachs international, and the former Vice Chair and Global Head of Growth Markets – to forfeit all 'or the majority' of outstanding long term performance incentive plan awards that were granted in 2011 and which have a performance period that includes 2012/2013, and also to 'forfeit a portion of other previously awarded compensation, if applicable'. According to the statement, one former executive has voluntarily agreed to return the majority of their 2011 award and Goldman is in 'active discussion with another of these retired senior executives, who also already received the 2011 award, about returning the majority of it as well'. The total amount being sought from these former executives is approximately \$67 million.
- **The firm will apply \$31 million in cuts to overall compensation for four current executives:** The current CEO, COO and CFO, as well as the current CEO of Goldman Sachs International have had their overall compensation reduced by \$31 million for 2020.

[Sources: SFC media release 22/10/2020; FCA media release 22/10/2020; DoJ media release 22/10/2020; Federal Reserve Board media release 21/10/2020; Goldman Sachs media release 22/10/2020; FCPA blog 22/10/2020; Stanford Law Foreign Corrupt Practices Clearing House 22/10/2020]

# Disclosure and Reporting

## Quality reporting is more vital than ever: The FRC has called on companies to step up the quality of their reporting in light of the 'heightened need for high-quality disclosures as a result of the Covid-19 pandemic'

The UK Financial Reporting Council's [latest annual review of corporate reporting](#) concludes that overall, the quality of corporate reporting little changed from last year, through there have been 'incremental improvements' in some areas.

Announcing the release of the report, The FRC's Executive Director of Supervision, David Rule said:

'Companies have a key responsibility to prepare high quality annual reports to ensure investors, shareholders and other users can make timely and informed decisions. We expect companies to improve their reporting in the "top ten" areas we identify. Given the heightened need for high-quality disclosures as a result of the Covid-19 pandemic, it is vital companies carefully consider the FRC's findings ahead of the next reporting cycle.'

### Top ten areas for improvement

The report calls on companies to focus on improving their reporting in the following 'top ten' areas namely: 1) judgements and estimates; 2) impairment of assets; 3) revenue from contracts with customers; 4) financial instruments; 5) alternative performance measures; 6) the strategic report; 7) the statement of cash flows (according to the FRC, the statement of cash flows remains the most common source of identified material errors); 8) provisions and contingencies; 9) fair value measurement; and 10) business combinations.

Page 3 of the FRC's summary the report contains a table briefly outlining where the regulator would like to see improvement in these areas. This can be accessed [here](#).

### COVID-19 disclosures

The FRC states that key considerations such as clarity, consistency, relevance and transparency remain key considerations when preparing reports/accounts.

The FRC suggests that 'better disclosures' have five characteristics.

Better COVID-19 disclosures: 1) are company specific; 2) provide a clear explanation of how the COVID-19 has impacted the company's reported position/performance and how it may impact future prospects; 3) 'address any material uncertainties and the basis of any significant judgements made, in adopting the going concern assumption'; 4) provide information about the basis for assumptions and significant accounting judgements; and 5) present a consistent outlook across the business model, principal risks and uncertainties, viability statement, going concern and accounting judgements and estimates.

### FRC focus areas

The regulator states that its upcoming monitoring of annual reports will focus on disclosures addressing risk, judgement and uncertainty given the ongoing impact of: a) the COVID-19 pandemic; b) BREXIT and c) climate risks.

[Sources: FRC media release 21/10/2020; Report: Annual Review of Corporate Reporting 2019/20; FRC Summary of the report]





# Meetings and Proxy Advisers

## Top Story | Jumping the gun on virtual meetings?

**The government's proposals to make permanent temporary changes to meeting and other requirements have met with opposition from some quarters on the basis that giving companies the option to hold shareholder meetings virtually will negatively impact shareholder rights.**

### Key Takeouts

- Context: Following what it considers to be a successful test run of changes to meeting and execution requirements introduced in response to the COVID-19 pandemic, the government recently released draft legislation for a short consultation period proposing to make them permanent. Our summary of key proposed changes is [here](#).
- Concerns raised: ISS, The Australian Shareholders' Association (ASA), Wilson Asset Management and reportedly other investor groups have flagged concerns about the timing and brevity of the consultation period and about the proposals themselves. In particular, the groups are opposed to the proposal to permanently allow companies the option to hold virtual (as distinct from hybrid) meetings. Both the ASA and Wilson Asset Management have called on retail shareholders to register their opposition by making a submission to the consultation/contacting their MP.

### Context: What's being proposed?

On 19 October, Treasury released draft legislation – [\[exposure draft\] Corporations Amendment \(Virtual Meetings and Electronic Communications\) Bill 2020](#) and [draft explanatory materials](#) – for consultation, proposing to both 'make permanent, and expand upon', the temporary changes to execution and meeting requirements in [Corporations \(Coronavirus Economic Response\) Determination \(No. 3\) 2020](#). Consultation on the proposed changes closes on 30 October.

Broadly, the draft Bill proposes to allow: a) electronic execution of company documents (including deeds) and documents relating to meetings; b) meetings to be held as virtual or hybrid meetings; c) notice of meetings and other documents relating to meetings to be communicated to prospective attendees electronically; and d) minutes to be recorded, kept and stored electronically.

The draft explanatory materials accompanying the draft Bill state that

'The objective of reform is to ensure that companies are able to use the most efficient mix of technologies to deliver on substantive corporate governance outcomes. These reforms will assist companies to more efficiently communicate with their shareholders and facilitate greater transparency between shareholders and directors'.

The draft explanatory materials also note that the temporary changes introduced because of the COVID-19 pandemic have provided an opportunity to test the changes and the government has had feedback that the impact has been positive.

'Companies have embraced the use of electronic means and alternative technologies to hold meetings and execute company document. The use of these technologies has resulted in regulatory savings for industry and increased productivity. There is now an opportunity to permanently modernise the relevant provisions in the Corporations Act in a way that preserves members' rights to participate'.

You can access our summary of the proposed changes [here](#).

### Is the government jumping the gun?

ISS has raised concerns

In a [statement](#), Institutional Shareholder Services' (ISS) Head of Australia and New Zealand Research Vas Kolesnikoff raised concerns about both the proposed changes to meeting requirements and the shortness of the consultation period which falls during the Australian AGM season.



Mr Kolesnikoff comments that investor support for virtual meetings (as distinct from hybrid meetings) is low (the latest [ISS 2020 Annual Policy survey](#) puts it at 11%, except where there is no alternative due to exceptional circumstances) because of the potential for virtual AGMs to diminish shareholder rights.

Mr Kolesnikoff comments,

'Virtual-only meetings can serve to limit shareholders' abilities to engage with corporate officials raise questions, and hinder the transparent expression of views. Examples of such concerns have been seen at some virtual-only AGMs in recent months. Due to the potential for virtual-only shareholder meetings to diminish shareholder rights, particularly without sufficient protection in place we believe it is important for institutional investors with views on this matter to respond to the consultation and make their views known'.

### **Australian shareholders in one in four companies are already being asked to approve changes to constitutions**

Mr Kolesnikoff also raised concerns that shareholders at one in four companies are already being asked to approve constitutional amendments enabling companies to hold virtual AGMs, signalling, he suggests that 'shareholders have not been given adequate time to consider the implications of the virtual meetings in this season'.

### **The Australian Shareholders' Association has also raised concerns**

The Australian Shareholders' Association (ASA) has issued a [statement](#) and emailed subscribers, registering concern about the timing of the consultation and the proposed changes.

On the issue of the timing of the consultation the ASA states,

'The Government's announcement in the Budget to make permanent the temporary relief in relation to online-only or virtual meetings, shareholder communications and electronic signatures, has appeared at the start of an intense six-week trial of the virtual AGM. Australian Shareholders' Association (ASA) will be submitting comment to the brief two week public consultation on the exposure draft legislation which will be publicly available next week while also representing retail shareholders at over 60 AGMs. The time given to comment is manifestly too short, coming right at the peak of the AGM season'.

The ASA has also urged retail shareholders to register their opposition virtual meetings and to 'demand inclusion of opt-in paper mail communication' by making a submission to their MP and/or by making a submission to the consultation.

ASA Chair Allan Goldin commented,

'ASA has championed hybrid AGMs (a physical meeting with the ability for some shareholders to participate online) since 2017, as well as the ability set a preference or "opt in" to receiving shareholder communications by mail. The AGM is the one chance a year that shareholders, the owners of the company have the opportunity to actually face their Directors, their representatives, and ask the questions they want answers to. A good AGM is an opportunity for healthy discussion and exchange of information and views. The virtual meeting is a sterile format where companies are able to ignore questions, and gloss over details. And similarly, forcing shareholders to receive communications by email. This proposed extension of Virtual meetings and forcing people on to emails is another attempt to deny retail shareholders their voice'.

### **Wilson Asset Management is calling on shareholders to register their concern about the proposed changes**

In an email, and in [The AFR](#), Wilson Asset Management Chair Geoff Wilson has confirmed his firm opposition to the proposed changes to meeting requirements on the basis that they will 'further diminish retail shareholders' rights in Australia'.

Mr Wilson states,

'Conducted in person, AGMs provide retail investors with the ability to directly and publicly asks questions of a company's Board of Directors. The virtual alternative, as we have experienced this year, allows Boards to omit, rephrase and reinterpret shareholders' questions. Retail shareholders will be unfairly impacted by this proposal as they have limited access to a company's Board and management team outside of an AGM'.

Mr Wilson has called on retail shareholders to make a submission to the consultation and/or to contact their relevant member (with the option to use a supplied statement) registering their concerns.

The statement reads:

'As a retail shareholder, I oppose the proposed relaxation of companies' requirement to conduct transparent AGMs. Without physical meetings, retail shareholders will face yet another disadvantage in accessing companies, asking questions and participating in a transparent process.'

### Related News: Other groups have also reportedly registered concerns

The AFR reports ([26/10/2020](#); 26/10/2020) that concerns have also been raised by other groups including the Australian Council of Superannuation Investors (ACSI) and Sandon Capital because of negative impact virtual meetings have on shareholder participation.

[Sources: ISS media release 23/10/2020; ASA media release 27/10/2020; The AFR 26/10/2020; 26/10/2020]



## Recent AGM results: Crown, Worley, Webject, IAG, Qantas

### Crown Resorts Ltd AGM

Crown's AGM was held as a virtual meeting on 22 October 2020. All board supported resolutions were carried.

**Remuneration Report:** The resolution to approve the remuneration report received 65.3% support (34.33% of votes against) constituting a 'first strike'.

The [AFR reports](#) that Consolidated Press Holdings (CPH) which has a 36% stake in Crown, abstained from voting on the remuneration report.

### Election/Re-election of directors

- The three directors standing for reelection were each reelected: Jane Halston received 75.01% of votes in support (24.8% against); Deputy Chair John Horvath received 68.64% of votes in support (31.27% against); and CPH CEO Guy Jalland was reelected to the board with 58% of votes in support (41.39% against). The AFR reports that CPH voted in support of their reelection.



- A third candidate, and Crown shareholder, Bryan Young, was not elected to the board, in line with the board's recommendation, receiving only 0.73% of votes in support.

CalPERS voted in line with the board's recommendations, voting in support of all three board-endorsed directors and in support of the remuneration report but against the election of shareholder candidate Bryan Young.

In her [address to the meeting](#), Crown Chair (and Chair of the Australian Financial Complaints Authority AFCA) Helen Coonan acknowledged the level of shareholder dissatisfaction with the board's performance and approach and promised change.

'I would like to thank all of those shareholders who have provided their feedback to us. In that respect, based on the proxy positions received before the meeting, I would like to acknowledge the significant vote against those Directors up for re-election today, as well as the vote against the Remuneration Report. Based on conversations with investors in the lead-up to today, I understand the vote on these resolutions reflects dissatisfaction with the performance of the Board and the Company, particularly in the context of evidence coming out of the ILGA Inquiry. Shareholders have given a clear and powerful message that Board renewal is required, and the Board accepts this feedback. Changes will be made'.

Ms Coonan gave an 'unreserved' apology for the governance and risk failings identified by the Liquor and Gaming Authority (ILGA) Inquiry and outlined the reform agenda being undertaken in response to strengthen accountability, compliance and governance within the organisation. Among other measures, Ms Coonan said that a new 'Compliance and Financial Crimes department' will be established which will house compliance, risk, audit and AML functions and have a direct reporting line to the board or a board Committee. In addition, Ms Coonan committed to a program of board renewal.

Ms Coonan said

'the Board accepts that there needs to be an injection of new perspectives and expertise on our Board. These changes need to be undertaken in a considered and thoughtful manner to ensure an orderly transition. I also recognise the importance of independent directors, and I will ensure the Board renewal process involves the recruitment of astute, qualified and fiercely independent Directors working in the best interest of all shareholders. CPH remains a significant shareholder, and I appreciate that this relationship needs to be appropriately managed. I want to reassure our various stakeholders that we are listening, and changes will be made'.

Other changes confirmed by Crown include the retirement of John Alexander from the board (immediately after the meeting), and as an executive in January 2021.

John Horvath will retire from the board when alternate arrangements have been made for his replacement.

[Sources: Crown ASX Announcements: Chair's address 22/10/2020; Retirement of directors 22/10/2020; Results of meeting; [registration required] The AFR 22/10/2020; CalPERS voting results]

## Worley Ltd

Worley's AGM was held as a virtual meeting on 23 October. All resolutions were carried.

**Remuneration report:** The resolution to approve the remuneration report was carried with 99.8% support (which meant that the contingent spill resolution was not required).

Resolutions granting deferred equity rights and separately granting long term performance rights to Worley CEO Robert Ashton were also carried, with each resolution receiving over 99% support.

**Election/Reelection of directors:** Dr Christopher Haynes was reelected to the board with 98.78% support. Dr Martin Parkinson was elected as a director with 98.79% support.

In his [address](#) to the meeting, Worley Chair John Grill flagged that a new director Emma Stein is set to join the board as an independent non-executive director from 10 December 2020. In announcing this, Mr Grill made clear that though Ms Stein was introduced to the board through Worley's largest shareholder Dar Group, she is 'not a representative of Dar Group', but an independent director.

This, Mr Grill said, is consistent with the position set out in his statement to the [meeting last year](#) concerning Dar Group's request for board representation. Namely that, the board 'remains open to considering appropriately qualified independent candidates proposed by Dar Group for a non-executive director position'.

The [AFR comments](#) that given its large stake, Dar Group could have forced a second strike.

[CalPERS](#) [voted](#) in support of all resolutions, but would have voted against the board spill resolution (had it been required).

[Sources: Worley Ltd ASX Announcements: Results of Meeting; AGM Addresses; CalPERS voting decisions; [registration required] The AFR 23/10/2020]

## Webjet Ltd

Webjet's AGM was held as a virtual meeting on 22 October 2020. All resolutions were carried.

### Remuneration report

- The resolution to approve the remuneration report received 99.06% shareholder support.
- The resolution to approve WebJect's Long Term Incentive Plan (LTIP) received 96.83% support.
- The resolution (resolution 7) to approve the proposed award of options under the Long Term Incentive Plan (LTIP) to Managing Director John Guscic received 67.38% of votes in support (32.62% of votes against).

CalPERS [voted in support](#) of the remuneration report, but against resolution 7. The [AFR reports](#) that both Glass Lewis and Institutional Shareholder Services recommended shareholders vote against the resolution.

In his [address to the meeting](#), Webjet Chair John Sharp recapped the adjustments made to remuneration in response to the pandemic including reductions to director fees and the voluntary 60% cut in Mr Guscic's pay.

Commenting on resolution 7 Mr Sharp acknowledged the 'substantial against vote' but reiterated the board's recommendation that shareholders vote in support on the basis that, a) the board cannot plan for volatility in the share price (in this case, an increase in the share price since the arrangements were negotiated); b) the shares are not 'free' but need to be bought for cash; and c) the award is justified on the basis of the need to retain talent to ensure the company remains competitive when travel markets return.

Prefacing the company's announcement of the results of the meeting, Mr Sharp again [reiterated](#) that,

'The Board's clear view is that John Guscic is the right leader to see the company through this difficult period, and that we need to put appropriate incentives in place to retain John and to deliver long term shareholder returns'.

Mr Sharp also said that the board had spent time in recent weeks engaging with shareholders to explain the rationale and to seek support and thanks shareholders for the 'constructive fashion' in which investors approached the process. Mr Sharp said that he considers that the results are a 'great endorsement of our approach and most importantly a reflection of the trust that our shareholders hold in management'.

**Director elections/re-elections:** Don Clarke and Brad Holman were each reelected to the board with 99.73% and 99.75% support respectively.

[CalPERS](#) [voted against](#) the reelection of both Mr Clarke and Mr Holman.

[Sources: Webjet Ltd ASX Announcements: Results of meeting; Chair and MD's address; CalPERS voting decision; [registration required] The AFR 23/10/2020]

## Insurance Australia Group Ltd (IAG)

IAG's AGM was held as a virtual meeting on 23 October 2020. All resolutions were carried including a special resolution approving an updated constitution that among other things, will enable IAG the flexibility to hold shareholder meetings electronically going forward.





The three shareholder ESG resolutions set to be considered at the meeting were withdrawn following the negotiation of an agreement with shareholders.

**Remuneration report:** The resolution to approve the remuneration report was carried with 98.90% of votes in support. A resolution for the allocation of share rights to Managing Director and CEO Nicholas Hawkins was also carried with 99.33% of votes in support.

In her [address](#) to the meeting, IAG Chair Elizabeth Bryan explained the steps the board took to ensure executive remuneration aligned with customer, community and shareholder interests in light of the challenges of the financial impact of the pandemic on the company's results. These steps included (among others), cancelling short term incentives for FY 20, implementing a 1% pay increase for employees below the top three layers of management, freezing fixed pay for senior managers and executives and freezing director fees.

CalPERS [voted](#) in support of both resolutions.

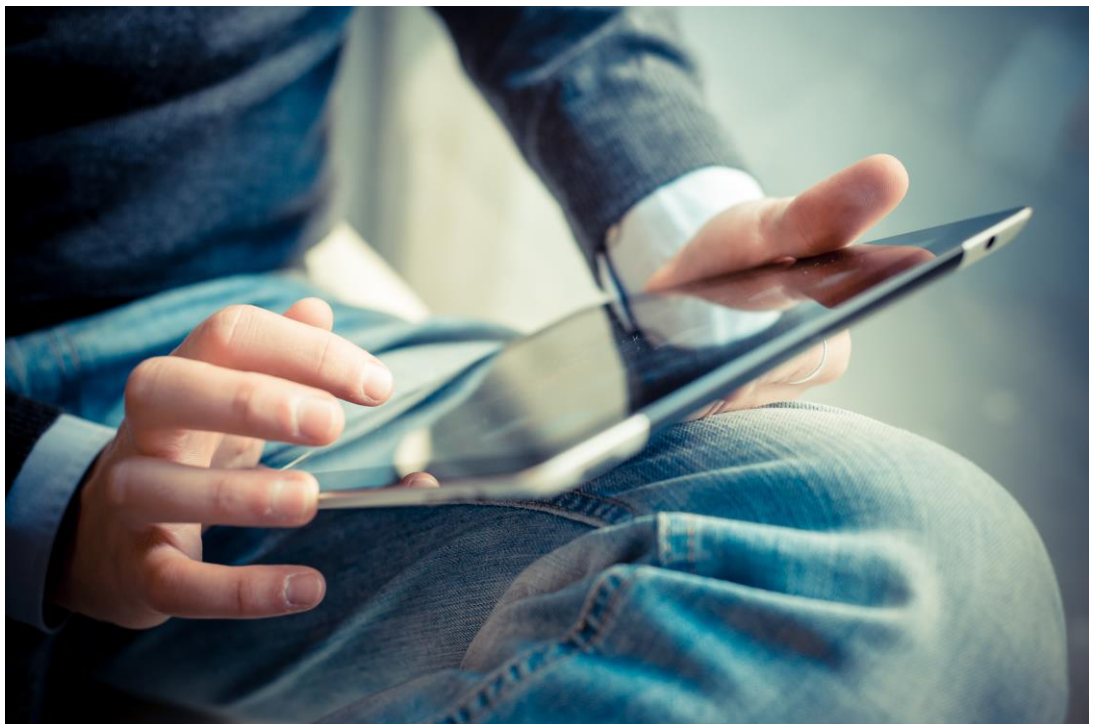
**Election/Re-election of directors:** The three directors standing for re-election were each elected with between 98.78% and 99.16% of votes in support. Simon Allen was elected to the board with 99.83% of votes in support.

CalPERS [voted in support](#) of the election of Simon Allen to the board and in favour of the reelection of Jon Nicholson, but against the reelection of both Duncan Boyle and Sheila McGregor.

#### Resolution to approve an updated constitution

Management's resolution for shareholders to approve an updated constitution was carried with 99.60% of votes in support. CalPERS [voted in support](#) of the resolution.

A marked up version of the revised constitution is [here](#).



In addition to a range of 'administrative or relatively minor' changes to bring the constitution up to date (it was last updated in 2007) were changes to enable future shareholder meetings to be held electronically going forward. A summary of key changes is included in the Notice of Meeting at [p9-11 here](#).

**Shareholder resolutions:** The three shareholder resolutions set to be considered at the meeting – a special resolution to amend the constitution to enable shareholders to bring ordinary resolutions; and two contingent resolutions calling on the company to: a) develop a policy guaranteeing that IAG will not invest in, insure or advocate for works that could result in negative impacts on nature of cultural sites eg raising the height of the Warragamba Dam wall; and b) to publicly declare its opposition to any policy position put forward by industry associations to which it belongs, where those positions are contrary to IAG's own policy position – were withdrawn ahead of the AGM after agreement was reached with The Colong Foundation for Wilderness who filed the resolutions.

In her address to the meeting, Ms Bryan said that IAG would 'continue to support the need for flood risk mitigation in the Hawkesbury Nepean Valley' but rather than advocating for a specific solution to the issue, would instead support

'appropriate environmental impact studies' to identify the best approach, 'while recognising the issues presented by the Colong Foundation for Wilderness'.

IAG will also 'commit to exploring the appropriateness of IAG becoming a signatory to the United Nations Principles for Sustainable Insurance WWF World Heritage Sites Initiative'.

[Sources: IAG ASX Announcements: Results of Meeting; Chair's Address to the meeting; Revised Constitution (Markup); CalPERS voting decision]

## **Qantas Airways Ltd**

The Qantas AGM was held as a virtual meeting on 23 October.

**Remuneration report:** The resolution to approve the remuneration report was carried with 91.07% of votes in support (8.93% against).

The resolution to approve Qantas CEO Alan Joyce's participation in the Long Term Incentive Plan (LTIP) was carried with 90.26% of votes in support (9.74% against).

CalPERS [voted in support of](#) both resolutions.

**Election/Re-election of directors:** Each of the three directors standing for re-election was re-elected. Resolutions to re-elect Maxine Brenner and Jacqueline Hey each received over 99% of votes in support. The resolution to reelect Michael L'Estrange was carried with 91.62% of votes in support (8.38% of votes against).

CalPERS [voted against](#) the reelection of Maxine Brenner and Jacqueline Hey but for the reelection of Michael L'Estrange.

In his [address to the AGM](#), Qantas Chair Richard Goyder did not directly discuss the company's approach to executive remuneration but did acknowledge the 'very hard decisions' Qantas had made to secure its 'survival' as a result of the pandemic, including standing down and letting go staff.

Mr Goyder also flagged that the board will reduce in size from next year, scaling back from 10 directors to eight after the retirement of long-serving directors Barbara Ward and Paul Rayner. This he said, is 'appropriate' given that the company is scaling back at all levels.

[Sources: Qantas ASX Announcements: Results of AGM; Chair's address; CalPERS voting decisions]

# Corporate Social Responsibility and Sustainability

## New evidence that behaving ethically delivers financial dividends? Research commissioned by the Ethics Centre has found that there is significant financial gain to be had by raising (even relatively slightly) ethical standards

The Ethics Centre commissioned Deloitte Access Economics to develop a framework to quantify and report on the benefits of lifting ethical standards. The [report](#) found that there is significant financial gain at an individual level, business level and national level associated with improved ethical behaviour.

Broadly the report concludes that,

'a more ethical Australia would achieve an economic improvement about half as big as the nation's economic reform priority list outlined by the Productivity Commission in 2017, where 28 reforms would lift the economy by some \$80 billion over time'.

**Suggested steps to lift ethical standards:** The report identifies five key areas for improvement - developing an ethical infrastructure index; elevating public discussions about ethics; strengthening ethics education; embedding ethics within institutions and supporting ethics in government/regulatory framework - supported by 30 individual initiatives.

**An opportunity to boost Australia's economic recovery:** Writing in [The AFR](#), Ethics Centre CEO Simon Longstaff observes that lifting standards of ethical behaviour, even by 10%, would deliver substantial financial (and non-financial) dividends and in the current climate, would substantially boost Australia's economic recovery, while letting standards slip would serve to strip value. On this basis, he queries.

'Why are we not investing in ethics? Why do we not aspire to grasp the opportunity before us? The wonderful thing is that we do not have to be perfect, just better'.

[Sources: Report: The ethical advantage: the economic and social benefits of ethics to Australia; [registration required] The AFR 26/10/2020; 26/10/2020]

## In Brief | Making ESG a priority: McKinsey has published an interview with South32 Chair Karen Wood discussing her role as Chair and how it has been impacted by the pandemic, the steps South32 is taking to prepare for a low-carbon world and 'what makes the company's purpose and strategy resilient in unpredictable times'

[Source: McKinsey: How an Australian resources company makes ESG a priority 22/10/2020]



# Regulators

The Treasurer has ordered a four week independent review into issues flagged by the Auditor General concerning certain ASIC expenses and approval processes, ASIC Chair James Shipton has temporarily stepped down pending the outcome, ASIC Deputy Chair has resigned

## Key Takeouts

- Australian Securities and Investments Commission (ASIC) Chair James Shipton has stepped down as Chair of the regulator pending the completion of an investigation by Treasury into concerns raised by the Australian National Audit Office (ANAO) about the payment of certain relocation expenses to Mr Shipton and to ASIC Deputy Chair Daniel Crennan. The ANAO is concerned that the payments may have exceeded remuneration caps set by the remuneration tribunal and that there may have been 'instances where the Commonwealth Procurement Rules were not followed'.
- The \$118,557 paid to Mr Shipton related to taxation advice and financial support from KPMG when he relocated from the US to take up his position as Chair. The funds paid to Mr Crennan covered \$69,621 in rental costs after his relocation from Melbourne to Sydney to take up his role. Both Mr Shipton and Mr Crennan have said that they will repay the funds.
- In a statement to the House of Representatives Standing Committee on Economics Mr Shipton said while he believed he had acted properly and appropriately in the matter, he held himself to the highest standards and on this basis considered it to be appropriate that he temporarily step down from his role pending the outcome of the investigation.
- Mr Crennan (reportedly) subsequently resigned from his role as Deputy Chair. The [SMH reports](#) that Mr Crennan's role will not be filled until the investigation is completed.
- Treasurer Josh Frydenberg has directed that the independent review of the ANAO's findings be completed by the end of the year. The review will be undertaken by Dr Vivienne Thom.
- The [SMH reports](#) that ASIC Deputy Chair Karen Chester will act as ASIC Chair pending the outcome of the investigation.

## Concerns raised by the Australian National Audit Office (ANAO)

In a [letter](#) to the Treasurer, Auditor General Grant Hehir raised concerns that:

- certain relocation costs paid to Australian Securities and Investments (ASIC) Chair James Shipton and separately, to ASIC Deputy Chair Daniel Crennan may have exceeded the remuneration cap set by the remuneration tribunal; and
- the payment approval processes in place to approve payments was not in full compliance with Commonwealth Procurement Rules.

Mr Hehir writes that the ANAO has recommended to ASIC (and ASIC has agreed) to undertake a reviews of internal processes to address the ANAO's concerns. The ANAO recommended that ASIC:

- review its processes for approving remuneration and benefits for executive office holders, 'including the trigger points for seeking advice should amounts outside of the Remuneration Determination be considered for approval'; and
- undertake a review of the procurement processes around payments made for the taxation advice paid on behalf of the Chair to determine which internal controls 'need to be either reinforced with relevant staff or redesigned to ensure effective implementation'.



## Independent investigation into the matters raised by the ANAO

In a [statement](#), the Treasurer announced that an independent investigation, led by Dr Vivienne Thom, will investigate the ANAO's findings. The investigation will advise the Treasurer of the findings and advise 'any further course of action that may be appropriate'. The Treasurer expects that the investigation will be completed by the end of the year.

### Statement from ASIC Chair James Shipton

Appearing before the House of Representatives Standing Committee on Economics ASIC Chair James Shipton [announced](#) his decision to temporarily step down from his role as Chair with immediate effect, pending the outcome of Treasury's review. Mr Shipton states,

'I have advised the Treasurer this afternoon that, in the circumstances, it is appropriate to stand aside pending the outcome of the review. Whilst I believe that I have acted properly and appropriately in this matter, I hold myself to the highest possible standard. What matters is that I act with integrity and honour. That means I need to act in the best interests of ASIC and its vital purpose to build a fair, honest and efficient financial system for all Australians'.

Mr Shipton acknowledged that ASIC's expense approval processes could be strengthened adding that measures do so have already been put in place.

'ASIC acknowledges the processes supporting the approval of these relocation expenses were inadequate and, given the high standard ASIC holds itself to, it is disappointed that such situation has occurred. ASIC anticipates the independent review will assist it to make appropriate changes to key policies and processes. In the interim ASIC has implemented changes to procedures associated with approval of expenses relating to geographic relocation for statutory appointees to ensure that there is Commission oversight of those expenses and that the arrangements for new statutory appointees are clearly documented prior to them being made'.

Mr Shipton confirmed that he and Mr Crennan had both undertaken to pay back the payments.

Mr Shipton concluded by stating that he looked forward to 'cooperating with the inquiry and I look forward to my continued service to the Australian community'.

### Questions from the Committee

The Committee put a number of questions to ASIC seeking more information about the ANAO's concerns, when the concerns were first raised with ASIC and ASIC's response.

The Committee heard that concerns around rental payments paid by ASIC on behalf of Mr Crennan were first raised in the ANAO's audit of ASIC's 2018/19 Annual Report. ASIC Deputy Chair Karen Chester made clear that there 'was not a formal finding nor a formal recommendation' made at that time. Rather, Ms Chester said that it was 'more an observation in their report to ASIC that the matter is one that needed to be looked at and whether or not it is something that needed to go to the Remuneration Tribunal'.

Ms Chester said that ASIC's chief legal office were then 'given responsibility for undertaking discussions with Treasury, undertaking some initial discussions with the Remuneration Tribunal and ultimately seeking some legal advice on the matter' with the result that it took 12 months to identify that there were 'definitive issues' to be dealt with. Ms Chester acknowledged that this process had 'taken too long'.

Asked when ASIC was first notified about the ANAO's specific conclusions, the Committee heard that ASIC first became aware of the matter when the ANAO was seeking to finalise their end-of-year audit of ASIC's financial statements on 10 September and had been working with the ANAO to provide the information required to 'close out the matter'.

A number of questions to ASIC from Deputy Chair of the Committee Andrew Leigh concerned delay in ASIC's response. Dr Leigh questioned why ASIC had not 'twigged' the problem, without the assistance of the Auditor



General, given coverage in [The AFR a year ago](#) of the fact that ASIC Deputy Chair Daniel Crennan's pay as disclosed in the regulator's Annual Report, exceeded that of the Chief Justice of the High Court.

In response, ASIC Deputy Chair Karen Chester agreed that the regulator should have acted to respond the concerns earlier, but emphasised that the regulator was now focused on supporting the independent review. She stated,

'That's the very issue that the Auditor-General has identified in his findings. We acknowledge those findings and we support the recommendations of the Auditor-General. In acknowledging those findings in our response to the auditor general, we agree, with respect to the payments and dealing with earlier concerns raised by the ANAO in last year's financial statement review, that we have not dealt with this quickly enough. There are failings of ASIC here, and we're not denying that. We've acknowledged that, we've accepted that and we're now focused on supporting the independent review. We've put in place some interim arrangements to make sure that the specific matters that were identified cannot occur in the interim. As a commission yesterday we signed off on some interim arrangements to be put in place. We undertook to do so with the Auditor-General. We now await the findings of the independent review to find out if anything further is required in terms of improving our internal processes and our governance arrangements.

[Sources: Letter to the Treasurer from the Auditor General; Treasurer Josh Frydenberg media release 23/10/2020; ASIC media release 23/10/2020; House of Representatives Standing Committee on Economics, ASIC Annual Report, APRA annual report, transcript of hearing 23/10/2020; The SMH 27/10/2020]



## APRA's appearance before the House of Representatives Standing Committee on Economics: Key takeaways from the hearing

The Australian Prudential Regulation Authority (APRA) appeared before the House of Representatives Standing Committee on Economics on 23 October.

Questions to the regulator included (among others) questions around the following themes:

- APRA's view on the key challenges for APRA-regulated industries in the short term
- APRA's climate stance/stance on ESG issues and how this translates into its expectations of industry
- the superannuation sector and the implementation of the government's proposed Your Future, Your Super reform package
- challenges in the banking sector including APRA's management of the end of COVID-19 loan deferrals and APRA's views on proposed responsible lending reforms.

A high level summary of some of the key points is below.

### APRA will review of internal remuneration processes/procedures

Asked whether APRA intends to carry out any investigations into the remuneration of the senior executive team to ensure 'full compliance with the relevant rules', in light of the concerns identified at the Australian Securities and Investments Commission (ASIC), APRA Chair Wayne Byres confirmed that APRA will 'certainly look into it and just double-check'.



Mr Byres commented that given the issues relate to accommodation allowances and tax advice and that 'none of the people at this table who are the statutory officers to which the Remuneration Tribunal rulings apply, have received reimbursement of tax advice or accommodation allowances...I feel quite confident we won't have an issue there'.

### **Adequate stress testing for the pandemic?**

Asked whether there was adequate stress testing and scenario planning to prepare for an event like the present COVID-19 pandemic and its impact on financial institutions, APRA Executive Board member Geoff Summerhayes said that APRA had released prudential guidance on pandemics in 2006, stress-tested firms in 2007, and updated the guidance on 'several occasions' since. 'We'd like to think that the APRA standards and the prudential standards more broadly have played to the resilience' of firms he said.

### **APRA's 'biggest concerns' for APRA-regulated industries over the short term**

Asked to nominate APRA's 'biggest concerns' for APRA regulated industries over the next six to eighteen months, APRA Chair Wayne Byres said that for the next six months APRA will continue to monitor the operational stability of all industries, in light of the ongoing disruption caused by the pandemic (eg many organisations are operating according to their business continuity plans, and 'large swathes of the workforce' are still working from home) – though he noted that to date there has been no problem.

Mr Byres observed,

... 'that's all been very reliable, and in fact the operational stability of the financial system has been very good, but you can never guarantee that nothing else will go wrong, so we need to keep a very close eye on that'. APRA will prepare for 'what happens as the government support mechanisms start to fade or are gradually wound down and we see the full economic impacts of the virus flowing through'.

**Banking sector:** Speaking specifically about concerns in the banking sector, APRA Deputy Chair John Lonsdale said that APRA has 'reweighted' its focus on ensuring the stability of the sector and in consequence is focused on capital, liquidity, credit quality and operational risk. Of these issues, Mr Lonsdale said that he considers 'credit quality is the one to watch', given the current uncertain environment, though he noted that at present 'we are quite comfortable'.

Looking forward to 2021, Mr Lonsdale said that

'APRA is thinking about how stability plays out through the banks, making sure that we stress test and make sure that the banks' recovery and resolution plans are as good as we can get them in case anything does go wrong. It's a very uncertain time, and we need to be prepared if something does go wrong'.

### **Insurance sector**

- **Private health insurers and life insurers:** Mr Summerhayes said that a key issue for private health insurers and for life insurers is 'how the health crisis plays out in a claims profile sense going forward'. For example, in the private health insurance context, it's unclear what the potential impact of deferred claims, delayed screening/preventative measures will be.
- **General insurers:** Mr Summerhayes nominated business interruption insurance as the 'big issue that general insurers are dealing with'. He said,  

'Typically, insurance is provided for business interruption as a result of physical damage. But, actually, when you look at the policy wording, they weren't as tight as they perhaps should have been. So the issue is: is pandemic business interruption covered or not covered? That is before the courts both here in Australia and globally. It's an area of high uncertainty'.

As a general rule, he observed insurers didn't underwrite or reserve the risk.

Asked whether there would be issues with travel insurance Mr Summerhayes agreed that there would be, but that 'from a prudential point of view' the issues would not 'have the same magnitude of prudential issues as the business interruption insurance' issue.

Asked whether the pandemic is likely to further impact directors and officers insurance (because of the potential for new class actions) Mr Summerhayes said that this was almost certainly occur.

'Whenever you have an unexpected disruption or intervention on something like this, that creates an opportunity. I think there is either a prudential issue here or a potential reputational conduct issue, or potentially both. And the issue you're referring to would fit into the way people thought that they had some right to claim but was shown that they didn't' he said.

## **APRA's continued focus on climate risk**

A number of questions from the Committee concerned APRA's stance and continued focus on climate risk including APRA's involvement as an observer on the steering committee of the Australian Sustainable Finance Initiative.

Asked whether APRA's involvement should be interpreted as support for 'where the Australian Sustainable Finance Initiative is going' Mr Summerhayes agreed that it could. He said,

'It seems to be a good example where industry works with regulators in a constructive way. We have similar engagements on a range of issues with the Australian Banking Association, the Insurance Council of Australia and the superannuation bodies et cetera'.

Asked to provide an update on APRA's work on the climate change financial risk vulnerability assessment, originally announced by APRA in February, Mr Summerhayes said that though work had been put on hold because of the pandemic, it has now recommenced. 'We are currently scoping that with the member agencies of the CFR [council of financial regulators] and we will commence consultation and discussion with major banks in the new year' he said.

Mr Summerhayes said that the vulnerability assessment will be mainly focused on large financial institutions in the first instance and then progressively be expanded. Mr Summerhayes noted that the Reserve bank is 'in particular is interested in the whole-economy impacts of physical and transition risk, and we see through the major banks as a window into that'.

Asked to explain why it is so important for regulated entities to 'engage in stress tests and risk assessments that involve the impact of climate change' Mr Summerhayes said that from APRA's perspective, it plays an important role in helping the regulator to understand the financial risk, the financial vulnerability of regulated firms. Mr Summerhayes said,

'We are currently dealing with a so-called tail risk event, in terms of COVID-19. Issues like pandemics are always there as risks. It's what's called a fat-tail risk—that is they're rare, but when they emerge they are very significant. The consensus amongst financial regulators globally—this is not an APRA view; this is a global view of regulators—is that climate change is a fat-tail risk. Albeit that it will occur at a slower pace than the onset of COVID-19, its ramifications will be significant. We need to understand the financial vulnerability of the firms we regulate to both those physical and transition risks. We see it as an issue of financial risk, and that's why we're interested.

## **Updating APRA's prudential standards and practice guides to reflect the importance of ESG considerations in the superannuation context**

Asked for an update on progress toward updating Prudential Practice Guide SPG 530 Investment Governance SPG 530, APRA Deputy Chair Helen Rowell said that APRA's prudential standards and practice guides were put in place in 2013 when APRA was given prudential standards making power for superannuation and are now in need of updating. Ms Rowell said that this work has been delayed as a result of the COVID-19 pandemic and that APRA is proposing to consult on revised standards 'in probably quarter to 2020-21'. The updates will 'reflect the world we're in now and the importance of ESG considerations as part of understanding the risk and return from different investments and how that gets reflected in investment strategies'.

Mr Summerhayes added that thinking around ESG risk, including climate risk, has changed since 2013. He said,

'I think initially—in 2013, when that standard was put out—it was seen as a choice that an investor might make based on a personal preference. So it was to do something that was seen as an ethical or purely environmental position. What has evolved is that there is, in fact, a connection between ESG considerations and financial outcomes. In the standard as it was written then it was almost like you were giving up on return to pursue that strategy. The evidence now is that, in fact, return and ESG considerations, as we've seen play

out on a range of issues, are highly correlated and so [inaudible] standards reflect [inaudible] current practice. And, in fairness, a lot has happened in seven years.'

Asked whether funds assessing and mitigating against climate change financial risks includes investing in companies or industries that do less damage to the environment than those that do, Mr Summerhayes said that this is not necessarily the case. He said,

'all we ask that firms do is take into consideration the changing nature of the environment in which they operate and how that will impact on either the businesses they are lending to, the projects they are investing in or the risks that they're underwriting'.

## **Superannuation sector**

**Your Super, Your Future reforms:** Asked to comment on the role APRA will be taking on in relation to the implementation of the 'Your Super, Your Future' reform package, Ms Rowell said that APRA is working closely with Treasury, ASIC and the Tax office on the implementation of the package.

Ms Rowell said,

'Our primary involvement will be with the underperformance measure and also the increasing transparency and accountability measure, but we are also working with the tax office around the data needed for the YourSuper tool. They're the three key areas of the four where we'll be involved'.

Asked to comment on how effective the superannuation heatmaps have been to date, Ms Rowell said that APRA had so far found them to be 'very effective we've described them as a game changer'. In illustration, Ms Rowell said that 42% of MySuper members had received a reduction in fees in the six months from December to June and that a number of products had either been closed/are in the process of being closed because of being identified as underperforming in the heatmaps. 'We think that the MySuper heatmap has had significant traction and delivered very good outcomes for members' Ms Rowell said.'

Asked whether APRA considers the Your Future, Your Super package could lead to funds prioritising passive, secure investments over more active management, Ms Rowell said, APRA would first need to see how the measure is implemented. That being said, Mr Rowell commented,

'our view would be that if trustees are confident that they have a good active investment strategy that can deliver better outcomes to members than a passive, low-cost strategy, then we would think they would continue to pursue them. If their strategy isn't delivering returns that are better than a passive investment strategy, then they need to revisit whether that is the right investment strategy.'

**Impact of the early release of superannuation scheme:** Asked whether APRA has any concerns about the impact of the early release of superannuation scheme on 'investment drag' and whether APRA has calculated the cost, Ms Rowell said that APRA has not undertaken specific analysis. 'We are obviously monitoring investment outcomes across the industry and what changes, if any, trustees are making to their investments' Ms Rowell said.

**Early Release of Superannuation Scheme scams:** Referencing the fact that the Australian Competition and Consumer Commission (ACCC) had nominated early release of superannuation scams as their top ranked category of scams for the year, Dr Andrew Leigh asked whether APRA has been concerned about the issue. Ms Rowell said that it is an issue that 'all of the agencies have been focusing on'. Ms Rowell said,

'There has been a concerted effort by the industry and the tax office in particular, working with APRA and ASIC, to make sure funds are well on top of the processes around fraud detection and the like. Some of the scams are probably more a matter for ASIC, and I know that ASIC has looked at some of those. What we are seeing in the data that has been coming through to us in terms of the level of fraud activity in the sector as a whole, and particularly in relation to the early release scheme, is that it has remained at a relatively low level'.

**Evaluation practices and management of assets:** Asked to comment on the extent to which APRA has looked at 'some of the revaluations, particularly of unlisted assets, in super funds over this period [the period since the outbreak of the COVID-19 pandemic] and whether they have integrity' noting that there have been some examples

of 'quite considerable' write downs of investments, Ms Rowell said that APRA has engaged closely with a number of superannuation funds from March until now and has

... 'got a reasonable degree of comfort through that process. We weren't necessarily looking at the individual asset adjustments or the valuation adjustments that were made. We were trying to understand the process that had been followed, the information sources and the people that were involved in that process to satisfy ourselves as to the robustness of the process'.

Ms Rowell said that engagement with industry has identified that there is room to 'improve some of those processes, and in particular the triggers and criteria used to determine when out-of-cycle valuation adjustments should be made, how they should be made and what the process was then for reverting back to a normal cycle of valuation adjustments'

Ms Rowell said that APRA is undertaking a thematic review of evaluation practices and management of assets with a view to assessing the range and quality of practices across the industry where there is need for improvement and that APRA would be happy to look at any information provided by the Committee on notice, and to incorporate consideration of it as part of the thematic review work.

Ms Rowell said that early next year, APRA hopes to 'come out with better practice guidance and a review of our prudential standard around investment governance, with a particular focus on lifting practice within this area'.

**Complaints about superannuation:** Asked how many complaints APRA had received about superannuation in the past five years, and whether there are any limitations in pursuing complaints Ms Rowell took the question about the number of complaints on notice, but confirmed that 'on the whole we don't face any particular constraints in looking into complaints'.

Adding to this, Mr Byres: said that 'quite often' complaints are directed to APRA that would be better directed to the Australian Financial Complaints Authority (AFCA) (and in the past to the Superannuation Complaints Tribunal). Where APRA considers that AFCA is better placed to handle a particular complaint, APRA will direct them there. 'If there was a sense that the issues being raised went to difficulties of a provincial nature, then we would look into those. But there are not high volumes' he said.

## Banking sector

**Responsible Lending:** Asked to comment on the extent to which APRA expects to apply responsible lending to non-bank lenders and what impact this may have on consumers' borrowing behaviour, Mr Byres said,

'The short answer to your question is: we don't intend to apply to non-banks. Just to expand on that, what is proposed is that ASIC will continue to be the authority looking at providers of credit that are not APRA-regulated banks, so they will still have the role overseeing that sector. What the government is proposing, though, is that, for that sector, replacement obligations for the current responsible lending obligations will be put in place which are based on the current APRA standards that apply to banks. So the intention is that—and I think it's really important, and this was in the Treasurer's announcement—APRA will continue to regulate banks and other authorised deposit takers in accordance with our existing standards. The Credit Act will be amended with some new obligations that replace the responsible lending obligations that are based on APRA standards, but the supervision and oversight of those when it comes to non-banks will remain with ASIC'.

Asked to explain what APRA's thinking is around when it would make rules for non-bank lenders (given APRA has had the power to introduce non-ADI lending rules since March 2018 if those lenders materially contribute to the risk of instability in the financial sector) Mr Byres said that the power was intended to be a reserve power, ie to be used in 'extreme circumstances'.

He said, when the power

... 'was announced, it was phrased as a reserve power—something that would be used in extreme circumstances if nonbanks grew to such a size or were conducting activities in such a way that they were a threat to the broader financial system. We've said on a number of occasions that we don't think that, given



the current size and nature of the non-bank sector, the use of those powers and certainly the hitting of that trigger'.

**Managing the end of loan deferrals:** Asked to comment on how APRA approaching managing issues that may arise as COVID-19 loan deferrals come to an end, Mr Lonsdale said that it a 'very significant issue' that APRA has been looking at 'very closely, not just within APRA with our regulatory colleagues'.

Mr Lonsdale said that APRA will shortly release data showing that loan deferrals have reduced significantly from approximately 10% to approximately 6.6%.

Mr Lonsdale said that APRA is

'working very closely with the banks to make sure that they have a plan in place, that they're contacting borrowers, that their risk governance is good and that as many people as possible can be contacted and come off deferrals. I should add that the impairment rates at the moment are very low—those loans that are actually in difficulty. Most are either coming off deferrals or being restructured in some way.'

Asked whether APRA has done any stress testing, or 'have any expectations, around rises in defaults on loan products' as the end of the loan deferral period nears, Mr Byres confirmed that APRA has undertaken a 'regular program of stress testing'.

'We do a lot of testing of the capacity of banks to withstand and increase in problem loans and defaults. We are absolutely doing that. We have done a few rounds of that this year, and we will do another one before the end of the year now that the budget and more recent RBA projections are out'.

Mr Byres said that APRA is expecting a rise in the number of defaults. He commented,

'I think that's inevitable from the economic circumstances that we are going through and will go through next year, particularly as a number of the support mechanisms roll off, including the deferrals program. There will, unfortunately, be some customers that reach the end of the deferral period and simply cannot get back to making any sort of payment—because, as individuals, they have lost their job or, as businesses, they are no longer viable. There will absolutely be a rise in defaults. At this point, as I said in my opening comments, our view is that the banking system is well capitalised and certainly has the financial strength to absorb that'.

### **Buy Now pay later sector**

Asked to provide a view on the rapid growth within the buy now pay later sector in terms of prudential issues and financial stability, Mr Byres said he could see no risk at this time.

'At this point I don't think there's a broader financial stability risk, notwithstanding, they're [buy now pay later providers] growing significantly. I think they're a long way from being a financial stability threat. It's a new and innovative form of providing credit to consumers. It'll challenge banks' credit card businesses. There'll be a range of implications and competitive dynamics that flow from it. Is it a particular concern to APRA and its impact on the banking sector? Not at this point.'

Mr Byres added that APRA will monitor 'with interest' any tie ups between buy now later providers and banks. Asked to comment on Westpac's move into the provision of 'white label banking services', Mr Byres said that he considers that he expects to 'see more of it' going forward.

### **Competition champion within APRA**

Asked to comment on why APRA had elected not to nominate a single competition champion within the regulator as recommended by the capability review, but instead to 'dilute' the role across the organisation, Ms Lonsdale did not agree that the competition focus had been diluted but rather factored into the roles of all APRA members and the agency and reflected in a number of APRA's initiatives.

[Source: House of Representatives Standing Committee on Economics, ASIC Annual Report, APRA annual report, transcript of hearing 23/10/2020]



# Financial Services

## Top Story | Order up! ASIC expands its menu of product intervention orders

The Australian Securities and Investments Commission (ASIC) made a [product intervention order](#) on 22 October that imposes conditions on the issue and distribution of contracts for difference (CFDs) to retail clients.

The MinterEllison team have released an article summarising the key aspects of the order and reflecting on the implications.

The full text of the article is available [here](#).

## The government has launched a review into the regulatory architecture of the Australian payments system

The government has [announced](#) a review, to be led by Scott Farrell, into 'the regulatory architecture of the payments system to ensure it is fit-for-purpose and responsive to advances in payments technology'.

Announcing the review, Treasurer Scott Morrison said,

'The Morrison Government will review the regulatory architecture of the Australian payments system as part of the Digital Business Package announced in the 2020-21 Budget to ensure it remains fit for purpose and is capable of supporting continued innovation for the benefit of both businesses and consumers. The Government is investing almost \$800 million to enable businesses take advantage of digital technologies to grow their businesses and create jobs as part of our economic recovery plan'.

### Terms of Reference

The Terms of Reference [state](#) that the review will not 'explicitly consider specific regulatory settings that are currently in place, but will focus on the overall regulatory architecture'.

Broadly, the review will consider:

- the roles of industry self-regulation, regulators and the government in promoting competition, innovation, efficiency and the stability of the system 'and consider whether the balance is right'
- assess whether the current governance and regulation of the system is fit for purpose and 'whether the regulatory framework adequately accommodates new and innovative systems and the effectiveness of the current structure in implementing government policy';
- how to increase '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';
- options to increase consumers'/business understanding about alternate payments methods
- the agility of government payments systems, including the extent to which they are capable of taking advantage of new functionality to enhance service delivery;
- global trends and how Australia should respond to ensure it remains internationally competitive.

The full terms of reference are [here](#).

**Timing:** The review will provide a report to Government by April 2021.

[Sources: Treasurer Josh Frydenberg media release 21/10/2020; Terms of Reference]



# Status update on the ALRC review into the legislative framework for corporations and financial services regulation

## Context

On 11 September, the government directed the Australian Law Reform Commission (ALRC) to conduct a [review of the legislative framework for corporations and financial services regulation](#) in line with the Hayne Commission's recommendations to simplify the legislative/regulatory framework. Our summary of the scope of the review is [here](#).

Broadly, the ALRC review will focus on three key areas: 1) the use and design of definitions in the Corporations Act 2001 (Cth) and Corporations Regulations; 2) the legislative design and hierarchy of the Corporations Act; and 3) restructuring/reframing Chapter 7 of the Corporations Act.

Interim reports will be prepared on each of these three topics on a progressive basis from 30 November 2021 with the final report due on 30 November 2023.

## Status update

The ALRC has welcomed Associate Professor Andrew Godwin as Special Counsel for the Review of the Legislative Framework for Corporations and Financial Services Regulation. Mr Godwin is joining the ALRC for a fixed-term secondment commencing in December.

The ALRC states that the addition of Mr Godwin

'strengthens the range of experts on the Inquiry advisory committee, comprising judges, government representatives, practitioners, and academics with vast experience in financial services'.

The ALRC states that initial consultations have commenced and the first advisory committee meeting, which will discuss a work plan for the inquiry, is set to be held in November.

[Source: ALRC media release 27/10/2020]

## Invest in stress testing capability: APRA's view of the impact of COVID-19 on private health insurers

In a speech entitled '[Health check: APRA's view of the impact of COVID-19 on private health insurers](#)' Australian Prudential Regulation Authority (APRA) General Manager Advice and Approvals Peter Kohlhausen spoke about the impact the COVID-19 pandemic has had (and may have) on private health insurers and emphasised the need for insurers to 'plan for the resilience of their businesses and the value they provide to customers' going forward.

Among other things, Mr Kohlhausen said that:

- **APRA considers that so far, insurers have 'navigated the challenges of COVID very well'** but that ultimately the full impact of the pandemic is not yet clear. Mr Kohlhausen observed, 'deferred claims and the associated reserving and capital issues will need ongoing careful management. Stakeholders will look for insurers and the overall industry to demonstrate that they have met their commitments not to profit from the pandemic'.
- **Risk that the pandemic may 'amplify and accelerate' sustainability and affordability challenges:** Mr Kohlhausen cautioned that 'underlying structural challenges that existed pre-COVID have not gone away, and the work needed by both insurers and APRA to prepare for and respond to those challenges is still important'.

Adding to this, he said,

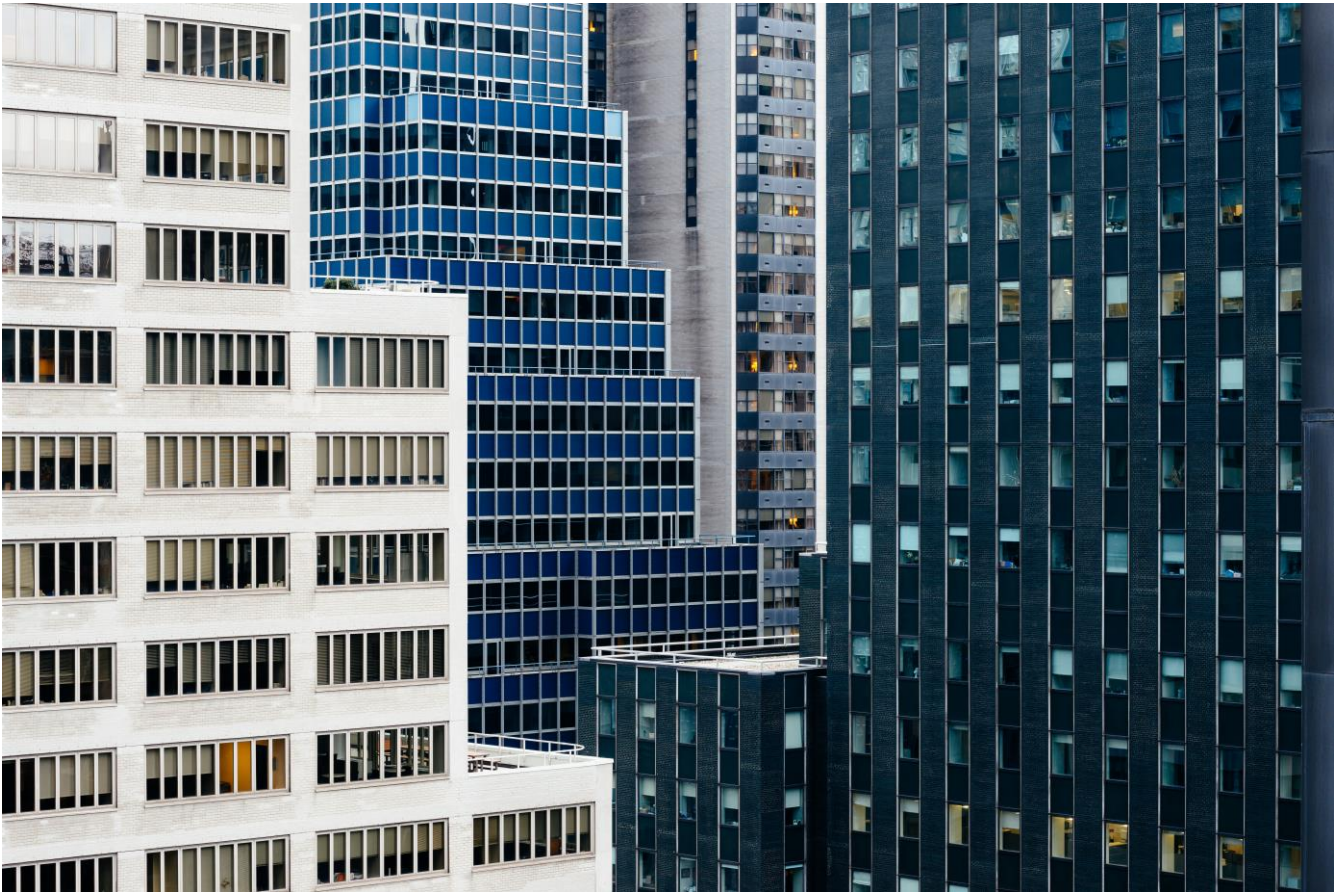
'Looking forward, there is the risk that the economic and health consequences of COVID could amplify and accelerate the challenges of affordability and sustainability. The need for ongoing careful management of these issues, including a robust strategy and Plan B as outlined in [APRA's June 2019 letter to industry](#), remains front of mind for APRA and should also be front of mind for insurers'.

- **Insurers 'should continue to invest in their stress testing capability' (and make sure that they're testing against stressful scenarios):** Mr Kohlhausen said that when APRA examined the scenarios being used to inform reserving

and capital decisions, 'they looked quite optimistic'. This, he said 're-confirms earlier APRA commentary that insurers should continue to invest in their stress testing capability and challenge themselves to consider a wide range of scenarios – including highly stressful ones'.

Mr Kohlhausen suggested that insurers may find it helpful to consider: economic scenarios (for example the impact unemployment and/or changes in household incomes as a result of the pandemic will have on participation); the potential for 'very constrained premium growth over the medium term'; scenarios around the cost/utilisation of health services and scenarios around the acute and longer term health impacts of the pandemic.

[Source: APRA General Manager, Advice and Approvals, Peter Kohlhausen - Speech to 19th Annual Health Insurance Summit 27/10/2020]



## The growth of Australia's fintech industry is a key government priority says Senator Hume

### Key Takeouts

- In a recent speech to the [Bund Summit](#), Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume identified growth of the fintech sector as a key government priority. 'At a time when the COVID-19 pandemic puts up barriers to physical interactions, fintech can connect us globally – and here in Australia, we see fintech as a globally-engaged sector that will help lead our economic recovery' she said.
- Ms Hume said that the pandemic, though challenging for the fintech sector, has also provided opportunities for fintechs to grow, as 'demand for digitalisation' has increased.
- Ms Hume said that the government sees 'enormous opportunities from greater cross-border investment and collaboration', especially with countries in our region and with China.



In her recent [speech](#) to the Bund Summit, Senator Jane Hume spoke about the impact that COVID-19 on Australia's fintechs and how the pandemic will impact the future of fintech.

## Some Key Points

- **Fintechs have continued to grow despite challenging conditions:** Ms Hume said that though it's been an 'incredibly difficult year for growing businesses right across the global economy' Australia's fintechs have continued to grow which, she said speaks to their capacity to adapt and 'persevere through this economic stock'. Ms Hume emphasised the government's strong support for the sector and the role the sector will play in Australia's economic recovery.
- **Resilience of Australia's financial system:** Ms Hume said that the resilience of Australia's financial system and the work in particular of the banks and the regulators since the outbreak of COVID-19, have been effective in buffering the impact of the pandemic on the economy. 'The Government, regulators and financial institutions will continue to work together. As required, they will take the necessary actions to support the continued resilience of our financial institutions, and ensure a strong recovery supporting businesses and households' Ms Hume said.
- **The growth of the fintech sector is a priority:** Ms Hume said that 'It's my priority that we keep Australia's fintech ecosystem running during this crisis, and that we come out of this difficult period ahead of where we were'. This, she said, is made easier by the fact that: Australia's fintech sector is diverse; the 'tremendous organic growth' of the sector; the willingness of consumers to adopt new technology; and the fact that the sector is a 'globally-focused ecosystem'.
- **COVID-19 has created opportunities for growth:** Ms Hume said that though COVID-19 has put pressure on many businesses, including in the fintech sector, 'the crisis is also a time for opportunities'. Ms Hume said that COVID-19 is driving an increase in demand for digitisation, making it an 'ideal time' for agile fintechs to innovate/expand as people 'look for new ways to manage their business and personal affairs'. On this basis, Ms Hume said that she considers the fintech sector will play an 'important role in the recovery'.
- **Support for fintech during the COVID-19 pandemic:** Ms Hume said the government 'supports fintech by providing a world class policy environment'. She observed, 'our job in Government is not to do the work of the private sector, but to provide the platforms and support that businesses like you need along the way – to help Australians be more engaged with their finances, enhance financial literacy and capability, and drive competition across the financial services sector'.
- **Consumer data right (CDR):** Ms Hume said that one of the 'most important policy changes currently underway in Australia is the roll out of the CDR this year', despite the pandemic, and the planned extension to other sectors going forward. The decision to push ahead with Open Banking this year, Ms Hume said was made because the government considered it a priority to enable consumers to more easily make changes to their finances at a time when many are under financial stress. Looking ahead, Ms Hume said that the government considers Open Banking to have 'enormous potential'. 'As the technology evolves, so too will the offerings that fintechs will be able to provide. This will spur competition and provide consumers with a wealth of choice'. Ms Hume said that there is already evidence that this is working given that after only three months, there is strong interest from the fintech sector with 'applications for accreditation are already well above our expectations' she said.
- **Regulatory sandbox:** Ms Hume said that government is also promoting innovation in fintech by putting in place supportive regulatory arrangements, for example through launching an 'enhanced regulatory sandbox' that enables businesses to test a range of products/services for a period of 24 months, before having to obtain a financial services or credit licence through the Australian Securities and Investment Commission (ASIC).
- **Other initiatives which benefit the Fintech sector:** Ms Hume said that the government has implemented a range of initiatives which will benefit the fintech sector including several budget measures. For example, 'significant new investment in regtech and payments infrastructure'.
- **Trade and international collaboration:** Ms Hume said that the government views sees 'enormous opportunities from greater cross-border investment and collaboration' and hopes to replicate the 'UK-Australia Fintech Bridge' (which facilitates entry of Australian and UK fintechs into each other's jurisdictions) in other jurisdictions, 'especially in our region – and we always welcome deeper engagement with the Chinese sector'.

[Source: Assistant Minister for superannuation, financial services and financial technology Jane Hume, Remarks to the 2020 Bund Summit, Shanghai, China: 'Crisis and Opportunities: New Finance and New Economy in a New Situation' 25/10/2020]



## Full compliance with design and distribution obligations is expected from day one, ASIC Commissioner Sean Hughes tells the Annual Credit Law Conference

In his [speech](#) at the 30th Annual Credit Law Conference, ASIC Commissioner Sean Hughes reminded his audience about the commencement of upcoming Hayne reforms; gave an update on ASIC's current priorities and highlighted examples of ASIC's recent enforcement actions; and briefly touched on planned changes to responsible lending obligations and the commencement of design and distribution obligations (DDO) in 2021.

A key theme of his speech was ASIC's focus on fairness and the need for industry to ensure it is treating consumers, especially vulnerable consumers, fairly despite the disruption. Mr Hughes concluded his speech by observing,

'As we all evolve and adapt in order to ride out this period of unprecedented business disruption, you can expect ASIC to evolve and adapt alongside you. But one thing remains the same – the expectation of fairness. Just as it has for the past 30 years – before the internet and indeed ASIC – existed in their present forms. Effective, adaptive regulation will continue to ensure confidence in a financial system that – even under stress – can remain fair, strong and efficient'.

### Some Key Points

- **The shorter term - commencement of Hayne reforms:** Mr Hughes spoke about three upcoming reforms set to commence in the shorter term: 1) the new mortgage brokers' best interests duty; 2) the introduction of breach reporting obligations for credit licensees; and 3) the introduction of reference checking and information sharing protocols for credit licensees and Australian Financial Services (AFS) licensees.
- **Mortgage Brokers' best interests duty:** Mr Hughes reminded his audience that from 1 January 2021, mortgage brokers will be required to act in the best interests of consumers and to prioritise consumers' interests when providing credit assistance. He noted that ASIC has released principles-based guidance in ASIC's RG 273 Mortgage Brokers: Best Interests Duty explaining the new obligations and providing 'ASIC's interpretative views on how mortgage brokers may comply with their best interests obligations at key stages of the credit assistance process'.
- **Breach reporting by AFS licensees:** Mr Hughes flagged the introduction of new breach reporting obligations for credit licensees which include new requirements for third-party licensees to report breaches by individual mortgage brokers and financial adviser representatives of other licensees. Mr Hughes said that ASIC plans to consult on updates to its guidance (RG 78 Breach reporting by AFS licensees) 'in early 2021'. Mr Hughes said that ASIC will also consult on an information sheet for the new requirements for financial advisers and mortgage brokers to investigate misconduct and notify and remediate affected clients.
- **Reference checking and information sharing protocol:** Mr Hughes said that Treasury has consulted already on draft legislation to implement Hayne Commission recommendations that credit licensees and AFS licensees be required to comply with a reference checking and information sharing protocol for mortgage brokers and financial advisers. He noted that under the draft legislation, ASIC would have the power to make legislative instruments determining the protocols for reference checking and information sharing about prospective financial adviser and mortgage broker representatives of AFS licensees and credit licensees. Mr Hughes said that once the legislation has been finalised and introduced, ASIC will consult with industry to seek feedback on the proposed requirements for licensees under the ASIC protocol and consult on a draft information sheet providing guidance on the ASIC protocol. In terms of timing, Mr Hughes said that ASIC plans to finalise the protocol in the first half of 2021, 'as soon as practical ahead of the October 2021 commencement'.
- **Enforcement and Royal Commission referrals:** Mr Hughes provided a recap of ASIC's enforcement work. As outlined in ASIC's enforcement update for the January to June 2020 period in H1 2020, 99 enforcement investigations were commenced and 62 investigations and litigation actions were completed. In terms of progress on Hayne referrals, Mr Hughes said that of the 13 referrals the Commission made to ASIC, five are currently in litigation, one is concluded and the remainder are under investigation. In addition to this work, Mr Hughes said that ASIC has either commenced or finalised ten Hayne case studies.
- **ASIC's present priorities - four key areas of focus:** Mr Hughes highlighted four key areas where ASIC is currently focusing its efforts: 1) industry engagement on COVID-19 related issues including the treatment of consumers experiencing financial hardship and predatory lending; 2) product intervention on continuing credit; 3) enforcement action in the car industry; and 4) debt management firm licensing.



- **Industry engagement on COVID-19 related issues:** Mr Hughes recapped ASIC's actions to engage with and support industry since the outbreak of the pandemic and the lockdowns began including: issuing clarification on ASIC's approach to lending during the pandemic; publishing expectations for lenders handling consumer requests for temporary assistance including loan repayment deferrals and releasing a updated expectations for lenders on the expiry of loan repayment deferrals. Mr Hughes made clear that the issue of consumers experiencing financial hardship is, and will remain into 2021, a focus for the regulator. In particular, he called on industry to ensure that they are dealing with consumers fairly. On the issue of predatory lending Mr Hughes said that ASIC continues

'to monitor lenders' responses to consumer hardship, we are mindful of the potential for unregulated fringe lenders who are using the pandemic to prey on vulnerable people. In particular, people who are desperate to stay in their homes...ASIC has zero tolerance for this kind of predatory behaviour, particularly lenders who are offering refinancing options that are nothing more than equity stripping. If you or your clients see examples of this behaviour, we urge you to come forward and report it to ASIC'.

Mr Hughes cautioned that 'it's one thing to have credit flowing quickly and efficiently to borrowers. But if the system isn't fair, the confidence won't be there'.

- **Product intervention on continuing credit:** Mr Hughes said that ASIC's focus on protecting consumers from being sold 'high cost unregulated credit' is set to continue. Mr Hughes gave two examples of ASIC's recent actions in this space. Namely, ASIC's proceedings in the Federal Court against Cigno and BHF Solutions seeking declarations and injunctions for alleged contraventions of the National Consumer Credit Protection Act 2009 relating to unlicensed credit activities; and ASIC's successful proceedings against Rent2Own Cars.
- **Debt management/credit repair firms:** Mr Hughes said that ASIC welcomes planned changes announced by the Treasurer on 25 September which (when legislated) will introduce a new requirement for debt management firms to hold an Australian Credit Licence when they are paid to represent consumers in disputes with financial firms from 1 April 2021.

[Note: This appears to be a reference to the government's 25 September announcement outlining plans to overhaul consumer credit laws. Our summary of the key takeaways is [here](#).]

More particularly, Mr Hughes welcomed the fact that the proposed reforms will: a) require debt management firms to meet the ongoing obligations of credit licensees (eg fit and proper person requirements; and to undertake their activities efficiently honestly and fairly); b) mean that ASIC will be able to use its compulsory information gathering powers to monitor compliance with the credit legislation and have recourse to administrative action, where appropriate; and c) mean that debt management firms will be members of the Australian Financial Complaints Authority (AFCA) which will ensure consumers have access to 'affordable and alternative forms of redress through AFCA if issues arise around the service provision'.

## Upcoming reforms – regulatory agenda for 2021

- **Responsible lending:** On the topic of responsible lending, Mr Hughes said,
 

'this is very much an ongoing process and entirely a matter for Government to give effect to its policy. We're working closely and collaboratively with Treasury and APRA to progress the reforms announced by the Treasurer on 25 September. We look forward to seeing the draft legislation soon'.
- **Buy-Now-Pay-Later sector:** ASIC plans to issue its planned buy now pay later report, the release of which was postponed because of the COVID-19 pandemic, 'in the near future'. The report will 'provide insights into the growth and evolution of the industry' and highlight examples of consumer 'harms' including the cost of buy now pay later arrangements for certain consumers. Mr Hughes made clear that the report will not advocate for regulatory intervention.
 

'what Government wishes to do in terms of future regulation, if any, of the BNPL sector, is a matter for Government. Our job is to put forward the facts, update the observations we made in Report 600 and provide the data to support good policy decisions in future'.
- **Design and distribution obligations:** Mr Hughes said that the Design and Distribution Obligations (DDO) which commence on 5 October 2021 are a 'step change' in financial services regulation which will require industry to design 'fit for purpose products that meet consumer needs' and will further require industry to consider whether

changes are required to the design of existing products and how they are being sold where poor consumer outcomes are identified. In terms of compliance, Mr Hughes said that,

'ASIC expects compliance with DDO from day one. Not in a 'tick-a-box' way, but compliance in a way that meaningfully improves outcomes for consumers. Ultimately, this means firms will need to understand their products and the outcomes they are delivering to consumers. In order to do this, industry needs to invest in the data systems now and ensure that they are properly able to monitor the outcomes of their products come 5 October next year. ASIC will be releasing its final guidance on these obligations soon'.

[Source: ASIC Speech by Sean Hughes, ASIC Commissioner, at the 30th Annual Credit Law Conference, 26/10/2020]

## COVID-19: So far funds have paid out \$34.4bn under the government's early release of superannuation scheme, the data indicates that the number of applications coming through continues to slow

The Australian Prudential Regulation Authority (APRA) has released industry-level and fund-level data on the early release of superannuation scheme for applications received during the period 20 April (inception of the scheme) to 18 October.

- Total payments made since the inception of the scheme have taken an average of 3.3 business days to process, with 95% of payments made within five business days.
- The volume of applications continues to slow: Over the week to 18 October, superannuation funds received 25,000 applications (down from 26,000 applications in the week to [11 October](#)).
- Of the applications received in the week to 18 October, 16,000 were initial applications bringing the total number of initial applications received to date to 3.3 million since inception of the scheme.
- 9,000 applications were repeat applications, bringing the total number of repeat applications to 1.3 million since the inception of the scheme.
- Over the week to 18 October, superannuation funds made payments to 25,000 members worth \$183 million.
- Funds have made approximately 4.5 million payments since the inception of the scheme worth a total of \$34.4 billion. This figure represents 98% of applications received since inception of the scheme.

[Source: APRA media release 26/10/2020]

## In Brief | APRA has published new frequently asked questions relating to the Superannuation Data Transformation

[Source: Phase 1 - Expenses, Asset Allocation, Insurance Arrangements and Fees and Costs - Frequently asked questions]

## In Brief | Proposed revisions to the credit risk management framework for ADIs: APRA is consulting on proposed changes to Reporting Standard ARS 220.0 Credit Risk Management to align it with the final version of Prudential Standard APS 220 Credit Risk Management released in December 2019. Submissions are due by 28 January

[Sources: APRA letter to ADIs 28/10/2020; Draft Reporting Standard ARS 220.0 Credit Risk Management]



# Risk Management

The government has launched a four week investigation into Australia Post and directed the CEO to temporarily step down from her role pending its completion

## Key Takeouts

- The government has initiated a four week independent review into the culture and governance at Australia Post and the CEO, Chair and the board after becoming aware that four executives were given Cartier watches as an award for their work on a particular project.
- The investigation will focus on the CEO, Chair and the board's involvement/actions in awarding the watches to the executives and whether this was in line with public expectations around ethical behaviour and 'high standards regarding the expenditure of money'.
- Australia Post's CEO Christine Holgate has been stood down as CEO pending the outcome of the investigation.
- Australia Post has issued statements confirming that it will fully cooperate with the investigation.
- The [AFR reports](#) that Federal Labor is pushing for both Australia Post CEO Christine Holgate, and Australia Post Chair Lucio di Bartolomeo to appear before the Senate Estimates hearing scheduled for 13 November.

## The issue that sparked the investigation

The Senate Estimates Committee heard from Australia Post CEO and Managing Director Christine Holgate that she and the Australia Post board had approved the gifting of \$12,000 worth of Cartier watches to four executives as awards for their efforts on a project to enable banking services to be provided through Australia Post branches. The concern from the Committee was that taxpayer funds were used to fund the gifts.

In a subsequent [statement](#), Australia Post Chair Lucio Di Bartolomeo clarified that since the hearings, he had become aware that in fact \$19,950 had been spent on the watches and confirmed the purchases were made in November 2018.

## The government has initiated an investigation into the matter and Ms Holgate has been stood aside while this occurs

In response to questions from the Opposition asking what action the government would be taking in on the issue, Prime Minister Scott Morrison said that the government had reacted swiftly by immediately launching an independent investigation into: a) the conduct of the board members 'and their governance'; b) the actions of management and the executive and c) by standing down Ms Holgate for the duration of the investigation. Mr Morrison said that once appropriate actions will be taken to address any issues identified once the investigation is complete.

Mr Morrison commented,

'This all happened within an hour. So appalled and shocked was I by that behaviour—any shareholder would in a company raise their outrage if they had seen that conduct by a chief executive, a management or a board; they would insist rightly on the same thing. Now, we are the shareholders of Australia Post on behalf of the Australian people, so that action was immediate. The chief executive has been instructed to stand aside and, if she doesn't wish to do that, she can go'.

Subsequently, Ministers Mathias Cormann and Paul Fletcher released a [joint statement](#) outlining some detail around the investigation. The full terms of reference are [here](#).

Broadly, the investigation will consider:

- 'Australia Post's governance arrangements and corporate culture concerning the proper use and management of public resources, in relation to gifts, rewards and expenses, including personal expenses of executives. The



investigation will determine whether Australia Post has expended money ethically and acted in a manner expected of a Government Business Enterprise'.

- More specifically the investigation is expected to determine:
  - 'the facts' around the 'the provision of wristwatches to Australia Post staff in late 2018'
  - the roles of Australia Post's CEO, the then Australia Post Chair (former Australia Post Chair John Stanhope), and the board in the incident
  - if there are other instances in Australia Post that are 'inconsistent with appropriate behaviour for a GBE [Government Business Enterprise] that require further investigation'
  - whether the incident and the actions of those involved in consistent with the obligations of directors and CEOs of GBEs and with 'the efficient, effective, economical and ethical expenditure of money and use of public resources'.
  - whether Australia Post's governance and management culture: a) supports the 'efficient, effective, economical and ethical management of resources'; b) meets the 'expectations of the public around the leadership and governance of Australia Post as a public institution'; and c) requires further investigation/review.
- The investigation is expected to be commenced immediately and completed within four weeks.
- The investigation will be conducted by the Department of Infrastructure, Transport, Regional Development and Communications, and the Department of Finance. The departments will be 'supported by an external law firm'.
- During the investigation, Australia Post CEO and Managing Director Christine Holgate will step aside from her position. Australia Post has confirmed in a separate statement that during this time, Australia Post CFO Rodney Boys will be acting in the role.

## Response from Australia Post

In a short [statement](#), Australia Post said that it the board and management will cooperate fully with the investigation and 'remain committed to delivering for our important stakeholders – our people, our Post Office partners, our customers and the community'.

A [subsequent statement](#), reiterated that Australia Post will,

...'continue to participate transparently in Budget Estimates 2020-21 processes, including to review the proof Hansard transcript of evidence when it is made available and to respond to questions on notice, and will – as reflected in my public statement yesterday – also fully cooperate with the recently announced investigation to be conducted by shareholder departments'.

[Sources: Hansard 22/10/2020; Joint media release Minister for Finance Mathias Cormann and Minister for Communications, Cyber Safety and the Arts Paul Fletcher 22/10/2020; Australia Post media releases 22/10/2020; 23/10/2020; Shadow Minister for Communications media release 22/10/2020; Terms of reference; [registration required] The AFR 26/10/2020; 26/10/2020; Government News 26/10/2020]

**In Brief | Why weren't these issues picked up sooner? Writing in The AFR, Swinburne Law School's Helen Bird suggests that the recent scandals at Australia Post and separately at ASIC point to failure of the system of existing controls and oversight of the two bodies. 'The optics have been poor, but the governance of important government institutions and enterprises, including Treasury, has been shown to be poorer. What has let them down is a less-than-stellar approach to remuneration entitlements. Both the Australian public and the public purse are entitled to expect better' she writes**

[Source: [registration required] The AFR 27/10/2020]



In Brief | The Bribery Prevention Network – a group of Australia's top ASX-listed companies, government organisations and civil society organisations - have launched a website offering free resources to assist Australian companies to manage bribery and corruption risks in domestic and international markets

[Source: Bribery Prevention Network media release 21/10/2020]

## Other News

### Investment and M&A trends in the infrastructure industry [Part 1]

MinterEllison has released the first of two articles discussing the outlook for investment and M&A activity in the infrastructure industry over the next 12 – 24 months.

You can access the full text [here](#).



## Contacts



**Mark Standen**  
**Partner**

---

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



**Siobhan Doherty**  
**Partner**

---

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



**Kate Hilder**  
**Consultant**

---

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