



# Governance News

Weekly wrap up of key financial services, governance, regulatory, risk and ESG developments.

14 April 2021

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# Boards and Directors

## Better board papers: The Governance Institute has released new guidance on the preparation of effective board papers

The Governance Institute of Australia has released new guidance on the preparation of decision-useful board papers including a sample board paper. The full text of the guide is available for download [here](#).

The guidance includes:

- Discussion of the purpose of board papers as the primary means by which directors access the information they need to fulfil their governance role
- Practical tips for developing guidelines for board paper preparation
- Practical guidance for preparing effective board papers including tips on the appropriate writing style and guidance on how to determine the appropriate format, structure and length of board papers
- A sample board paper template (Appendix 1 of the guide).

Announcing the release of the guidance Governance Institute CEO Megan Motto emphasised the need for regular review of existing board paper preparation processes to ensure ongoing effectiveness. Ms Motto also said that the board has an important role to play in providing guidance on the development of board paper policies/guidelines.

'While no one wants the board to be weighed down in unnecessary detail, board papers are an area where directors need to set the tone around the type and format of information they require in order to carry out their director duties.'

Ms Motto also observed that organisations need to ensure that board papers are able to stand up to third party scrutiny.

'Given the tumultuous start to the year for several corporations where failures in communication to the board was seen as partly to blame for failings, this is an area that no organisation can ignore. This new guidance is essential reading for anyone involved in the board paper process.'

[Source: Governance Institute of Australia guide: Board Papers April 2021]

## DIN/modernising business registers implementation update: Commissioner of Taxation to be the registrar of the Australian Business Registry Services

Legislation that will introduce a new director identification number (DIN) requirement, and centralise and streamline access to business registers received Royal Assent on 22 June 2020. You can find a short overview of the reforms [here](#).

Minister for Superannuation, Financial Services and the Digital Economy Jane Hume has announced that the Commissioner of Taxation will be the registrar of the Australian Business Registry Services (ABRS), which once fully established will consolidate ASIC's 31 business registers and the Australian Business Register onto a 'new modern system' at the ATO.

Senator Hume flagged that Director Identification Numbers (the unique identifier for directors/director ID) will be the first new function of the ABRS to be delivered later this year.

More information about the status of the roll out of plans to modernise business registers is available on the ATO website [here](#).

ASIC has advised that

- 'directors don't need to do anything now' in terms of applying for a DIN as the ATO needs to test the DIN application process before it is rolled out to users.
- for now, there is no change to how users register, search and access extracts of registers.

[Source: Minister for Superannuation, Financial Services and the Digital Economy Jane Hume media release 13/04/2021; ASIC update: Modernising Business Registers program]



# Diversity

## Australia slips from 15th to 50th in global gender equality index

The World Economic Forum has released [its Global Gap Report 2021](#) which assesses and ranks the progress of 156 countries towards gender parity.

The report provides a ranking of each country's progress based on their actions to address gender gaps in four key areas: 1) economic participation and opportunity, 2) educational attainment, 3) health and survival; and 4) political empowerment.

### Global trends

- **On current projections, the global gender gap will not close until 2156:** Globally, progress towards gender parity slipped backwards over the last 12 months. The report attributes this in the main to the lack of progress made by larger countries over the period. Based on the current trajectory, the report predicts that it will now take 135.6 years to close the global gender gap.
- **The largest gap globally is in the area of political empowerment** which increased 2.4% since the 2020 report. Based on current trends, it will take 145.5 years to attain gender parity in politics.
  - Across the 156 countries covered by the index, women represent only 26.1% of some 35,500 parliament seats and just 22.6% of over 3,400 ministers worldwide.
  - In 81 countries, there has never been a woman head of state, as of 15th January 2021.
- **The next largest gap globally is in the area of economic participation and opportunity** which has marginally improved since 2020 (though the report observes that the data does not reflect the full impact of the pandemic). Based on current trends it's predicted that it will take another 267.6 years to eliminate the gap.
- **Gender gaps in educational attainment and health and survival are nearly closed.**
  - In the area of educational attainment, 95% of the gap has been eliminated globally with 37 countries already at parity. Having said this, the report nevertheless predicts that it will take 14.2 years to eliminate the gap entirely.
  - In the area of health and survival, the gap is 96% closed (slightly down on 2020).

### What will it take to close the global gender gap?

In a WEF blog post, Dr Zara Nanu (co-founder and CEO of Gapsquare) suggests that addressing occupational gender segregation and barriers to career progression are key to closing the gender gap. Dr Nanu also observes that regulation may assist. For example, she observes that the ten top ranked countries on gender equity all have equal pay for equal value legislation, and eight have gender pay transparency legislation.

### Australia

Australia's global ranking has slipped from 15th on the global equality index in 2006 to 50 in 2021. In contrast, New Zealand is ranked fourth, the UK is ranked 23rd and the US is ranked 30th.

As you can see in the table below, Australia's ranking has slipped in every area except educational attainment (where Australia has maintained its number one ranking).

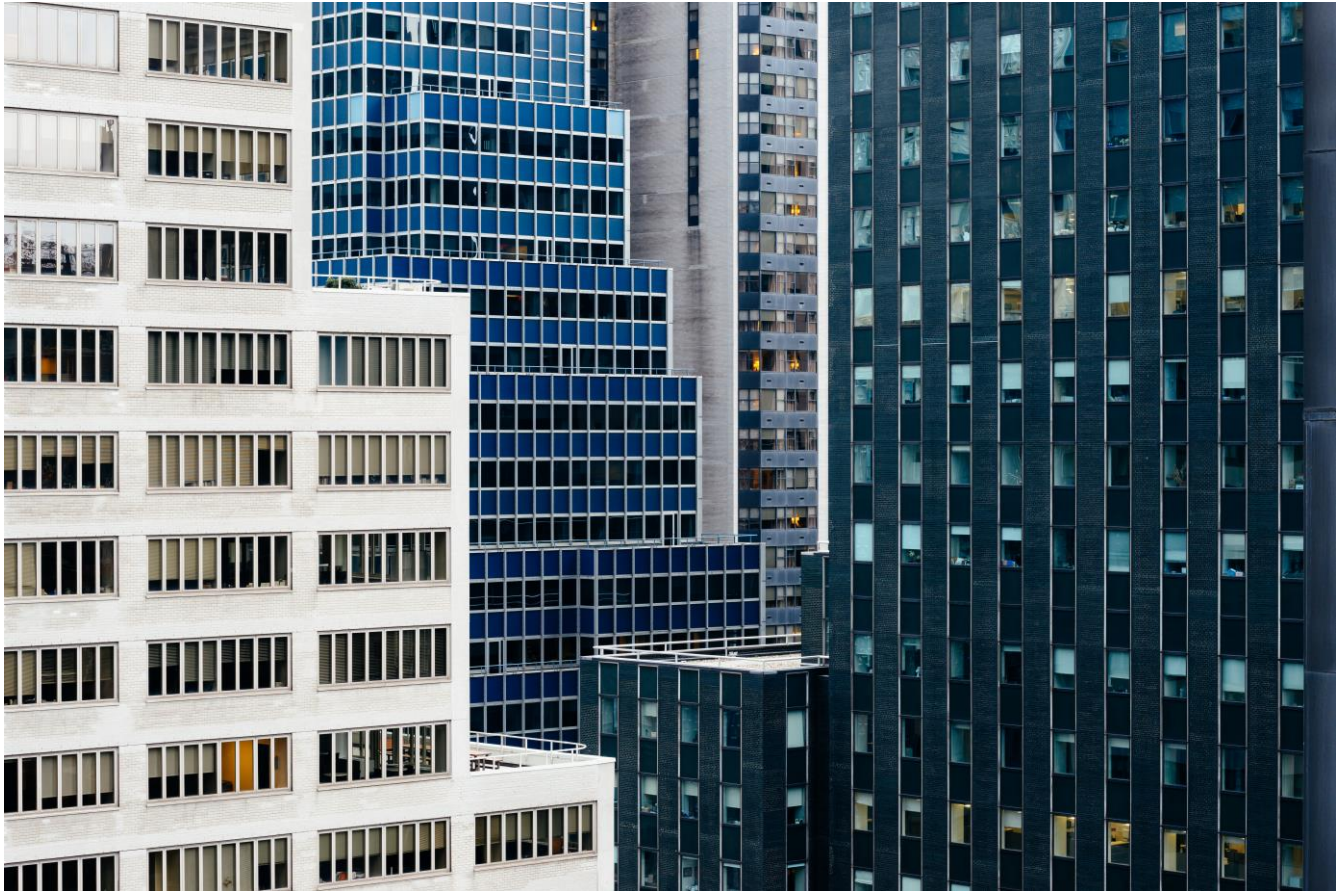
AREA	2006 RANKING	2021 RANKING
Economic participation and opportunity	12	70
Educational attainment	1	1
Health and survival	57	99
Political empowerment	32	54

Commenting on the findings, Greens leader in the senate Larissa Waters [called on](#) the government to take immediate action, including implementing the recommendations of the Respect@Work report, to reverse this decline. Commenting specifically on the decline in female political empowerment Senator Waters said that there would be no

improvement until 'we can ensure that parliament is a safe place to work, where diverse voices are represented and listened to. We know what needs to be done. We just need a government willing to do it.'

[Sources: WEF Global Gender Gap Report 2021; WEF blog 31/03/2021; Greens Senator Larissa Waters media release 31/03/2021]

## What happens when women are added to the C-suite? A recent paper provides insights into the impact of increased gender diversity on strategic thinking



Harvard Business Review has published an [article](#) discussing the key findings of research into the impact of increasing the proportion of women in the C-suite on firms' overall approach to strategy and innovation.

The research is based on analysis of data - the appointments of male and female executives, research and development spending, merger and acquisition rates and the content of letters to shareholders - from 163 multinational companies over a thirteen year period.

### Three key patterns emerged

Broadly, the researchers identified that the appointment of female executives tended to shift firms' strategic thinking in three broad ways.

- Firms became 'more open to change'/transformation while simultaneously less 'risk seeking' after women were added ie companies seemed more open to taking on new ideas, while also seeking to reduce the associated risks. This shift in thinking/approach was reflected in the language used to describe risk in company documents/communications. Commenting on this, the researchers state,  
'...adding women to the C-suite does not simply bring new perspectives to the top management team — it shifts how the TMT thinks. Our research indicates that female executives don't just offer specific new ideas to the team; their presence actually makes the TMT collectively more open to change and less comfortable with risk-taking'.
- Firms shifted their focus from an M&A based 'knowledge buying strategy' to a 'knowledge building strategy' based largely on internal R&D. This was reflected in an increase in R&D investments by an average of 1.1% (which the report comments is 'substantial' given the numbers involved).



- Generally, the impact of female appointees was greatest where women were 'well integrated' into team. More particularly, the report found that:
  - adding new female executives only worked to change C suite thinking overall where the executive team already included at least one woman
  - where new female hires were part of a smaller cohort of new appointees, they were more likely to have a greater impact than where they were part of a larger cohort.

### Suggested 'root causes' behind the findings

The primary focus of the research was on identifying causal relationships, rather than looking at the causes behind the findings. Having said this, the researchers suggest that based on previous research:

- The increased openness to transformation combined with the more cautious approach to risk may reflect women's path's to executive positions. The researchers suggests,
 

'They [female executives] often learn to stand out by promoting novel strategies in an effort to overcome stereotypes of timidity, but at the same time, the hyper-visibility that comes with being the only one of an underrepresented group drastically increases the professional costs of making mistakes, and so they learn to carefully weigh the benefits of their innovative proposals with the risks of potential failure'.
- It's also suggested that female executives are likely to be less concerned about preserving tradition and more open to challenging the status quo than their male counterparts.
- Finally, it's suggested that the changes may be 'simply the direct result of increasing diversity'.
 

'Research suggests that having more diverse perspectives to weigh in on key decisions can make a group more open to change, and more likely to see change as feasible. At the same time, having a wider range of opinions to consider often slows down decision-making, decreasing the chances that the group will make rash or risky decisions.

[Source: Corinne Post, Boris Lokshin, and Christophe Boone, 'Research: Adding Women to the C-Suite Changes How Companies Think', Harvard Business Review 06/04/2021]

## Arjuna Capital has released a report ranking 51 large US companies on pay equity

### Key Takeouts

- Despite the increasing levels of shareholder concern around pay equity and calls for more transparency on the issue, few companies are living up to expectations
- 51% of the 51 companies assessed received an 'F' (fail) grade on pay equity

Arjuna Capital has released a [report](#) ranking 51 large US companies in the finance, technology/communications, consumer and healthcare sectors on the actions they are taking to address their racial and gender pay gaps.

Each company's ranking is based on an assessment of their disclosed actions in five main categories: 1) racial pay gap; 2) gender pay gap; 3) UK pay gap; 4) coverage (ie the extent to which companies provide disclosure of all components of compensation and the extent to which their disclosure covers their full workforce (as opposed to being limited to US operations)); and 5) commitment (ie whether companies have a commitment to fully understand gender/racial equity across all geographies/operations and whether they have committed to regularly review their pay gap analysis and disclosure).

Each of the 51 companies included in the report has faced shareholder pay equity proposals seeking improved disclosure.

### Some Key Takeaways

- Only five of the 51 companies included in the report received an 'A' grade.
- 26 companies received an 'F' (fail)
- Though 24 of the 51 companies assessed in the report improved their overall gender/racial equity score, nine have slipped backwards over the past year
- Financial Services sector: 19 of the 51 companies assessed were financial services companies. Of this group, three received an 'A' ranking, while 9 received an 'F' (fail) ranking.

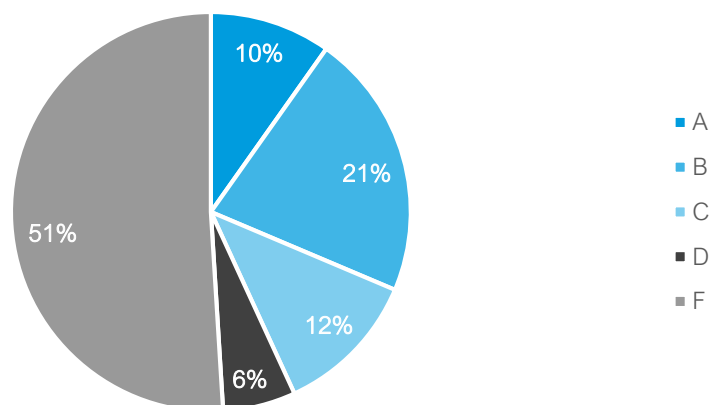


- Technology sector: Of the 15 technology companies included in the report, zero received an 'A' ranking and six received an F ranking.

- Other sectors:

- Consumer sector: Of the 10 companies in this category only one received an 'A' ranking, while six received an 'F' ranking.
- Healthcare sector: Of the seven health care companies included, five received an 'F' ranking, and one received an 'A' ranking.

Rankings: 51% of companies received a 'fail' grade



- Despite increasing shareholder/investor focus on the issue, disclosure of racial pay gaps is still far from universal. According to the report, only 23 of the 51 companies assessed disclosed this information. The report also found that some sectors are more likely to disclose the information than others. For example, companies in the financial services sector are more likely than tech companies to provide disclosure.
- Few companies have voluntarily provided unadjusted (median) pay gap data beyond their UK operations (where it is mandated).
- Shareholder focus on the issue continues to intensify:
  - Over the last seven years, 132 shareholder proposals on this issue have been filed at more than 69 companies (including the 51 in the report) and many more companies have been engaged through shareholder dialogue.
  - In 2021, seven resolutions calling for disclosure of median racial and gender pay gaps have been filed. Two have already been withdrawn after the companies made concessions. The report comments that in light of 'heightened awareness about racial justice' companies appear to be more receptive to negotiating/making concessions on the issue.

[Sources: Arjuna Capital media release 24/03/2021; Full text report: Racial and Gender Pay Scorecard 2021: Navigating Corporate Racial and Gender Pay Disclosures]

**In Brief | JP Morgan Wealth Management has announced plans to hire 300 additional Black and Latinx advisors by the end of 2025 as part of its broader \$30 billion commitment to advance racial equality**

[Source: JP Morgan Chase media release 26/03/2021]

## Institutional Investors and Stewardship

### Norway's sovereign wealth fund has made its first investment in renewable energy and signalled its intention to gradually build up its renewable energy portfolio focusing primarily on wind and solar projects

Norges Bank Investment Management has released a revised strategy for 2021-2022 which includes the fund's first investment in renewable energy infrastructure – a 50% stake in what is currently the second largest operational offshore wind farm globally.

According to the strategy, the fund intends (among other things) to:

- Gradually build up its renewable energy portfolio focusing primarily on wind and solar power
- 'Further reduce' its exposure to companies with companies with 'unsustainable business models and re-allocate capital to more sustainable companies'
- Step up its engagement on ESG issues. In particular, the fund intends to:
  - 'hold boards accountable for the outcomes of their decisions, including companies' financial performance and their impact on society and the environment'
  - 'develop shareholder voting as a scalable and effective way of exercising ownership'
- Be a 'global leader in responsible investment'. The Fund plans to 'increase external collaboration, use new technologies and provide new solutions to emerging issues'.

[Sources: Norges Bank Investment Management strategy presentation; Strategy plan 2021-22]

### Supply chain due diligence: Investor Alliance for Human Rights steps up engagement with companies with ties to the Uyghur Region

Members of the Investor Alliance for Human Rights (Alliance) – a collective of various asset managers, public pension funds and others representing over US\$5.5 trillion in assets under management and 18 countries – have stepped up their engagement with a number of companies with ties to the Uyghur Region.

The Alliance argues that despite documented human rights abuses, including forced labour, a number of companies across a range of sectors – apparel, technology, food, energy etc – are continuing to rely on materials manufactured in the region.

The full list of companies being engaged is [here](#).

The Alliance has signalled that if necessary, it will consider filing shareholder proposals.

[Source: Investor Alliance for human rights media release 30/03/2021]

### Majority Action calls on investors to vote against the directors of 'systemically important' companies to register their concern about climate inaction

Majority Action has launched a campaign – [Proxy Voting for 1.5°C World](#) - calling on institutional investors and state treasurers to vote against a list of named 'key directors' or board members at 'systemically important' companies in the electricity generation, oil and gas, and banking sectors that have either not yet set emissions targets aligned to limiting warming to 1.5°C and/or not yet aligned their strategy/business plans to achieving their emissions targets.

Companies targeted include (among others): JP Morgan Chase, Wells Fargo and Goldman Sachs. You can find the full list of companies together with detailed voting recommendations [here](#).

Announcing the launch of the initiative, Executive Director of Majority Action Eli Kasargod-Staub commented,



'Investors must focus on holding directors accountable at the largest companies whose actions are a significant driver of climate change. When directors fail to take adequate climate action, responsible investors must use their most powerful tool - their proxy voting power - to vote directors out.'

The initiative has the support of Illinois State Treasurer Michael Frerichs, Vermont State Treasurer Beth Pearce and Connecticut State Treasurer Shawn Wooden as well as CalPERS and the New York State Common Retirement Fund. Majority Action has urged Vanguard and BlackRock to support the initiative.

[Sources: Majority Action media release 30/03/2021; As You Sow media release 30/03/2021]

## Global report finds climate risk is becoming an increasingly central factor in institutional investors' overall approach



Robeco has released the results of a survey into the approach being taken by institutional investors globally, to climate risk. The survey includes responses from 300 of the world's largest institutional and wholesale investors in Europe, North America and Asia Pacific, which together account for 20% of global assets.

### Some Key Findings

#### Most investors consider that the goals of the Paris Agreement are achievable

- 69% of investors consider that the goals of the Paris Agreement are achievable (if sufficient changes are implemented).
- 80% of investors believe governments/others need to do more if the goals of the Paris Agreement are to be met

#### Climate risk is set to play an increasingly important role in investment policy

- 86% of investors consider that climate change will be 'at the centre of their investment policy' or play a significant role in it over the next two years. For context, two years ago only 9% of investors indicated that climate change was 'at the centre of their investment policy'.
- Only 5% of investors indicated that climate change will play no part in their policy over the next two years.
- Formal climate policy: 73% of investors already have a formal policy on climate change in place or indicated that climate will be integrated into their broader sustainability policy in the near future.



## Net zero emissions targets?

- Only 17% of investors have set net zero emissions targets.
- Five year outlook:
  - 52% of investors expect to set net zero emissions targets in the next five years.
  - Looking more closely, the proportion of investors planning to set a net zero target is higher in Europe and North America where 60% of investors expect to do so within the five year timeframe.
  - In the Asia Pacific region, this proportion is far lower, with only 29% expecting to set net zero emissions targets in the next five years.

## What's driving the shift in approach?

Though the report found that there are a number of contributing factors to the shift in approach to climate risk, acting in the interests of stakeholders emerged as a key change driver. For example:

- 63% of investors see acting on climate risk as part of their fiduciary duty as investors with a longer term perspective
- 68% of investors see acting on climate risk as being in external stakeholders' interest (customers and clients, the public, regulators and others) as well as being in the long term interests of stakeholders.

## Divestment?

The report found that 18.8% of institutional investors' overall portfolios will be divested from carbon-intensive assets over the next five years. For context, investors estimated that they had divested less than less than 9% their high carbon intensive assets over the last five years.

[Sources: Robeco media release 22/03/2021; Robeco 2021 Global Climate Survey]





# Shareholder Activism

## New report finds that shareholder activism globally is still at record lows

### Key Takeouts

- According to a new global report, the level of activist activity is well down on recent years
- Levels of activity continue to be highest (by far) in the US, followed by Australia and Japan.
- The number of Australia-based companies publicly subjected to activist demands in Q1 2021 was slightly up on the same period in 2020 (10 in Q1 2020 vs 12 in Q1 2021).

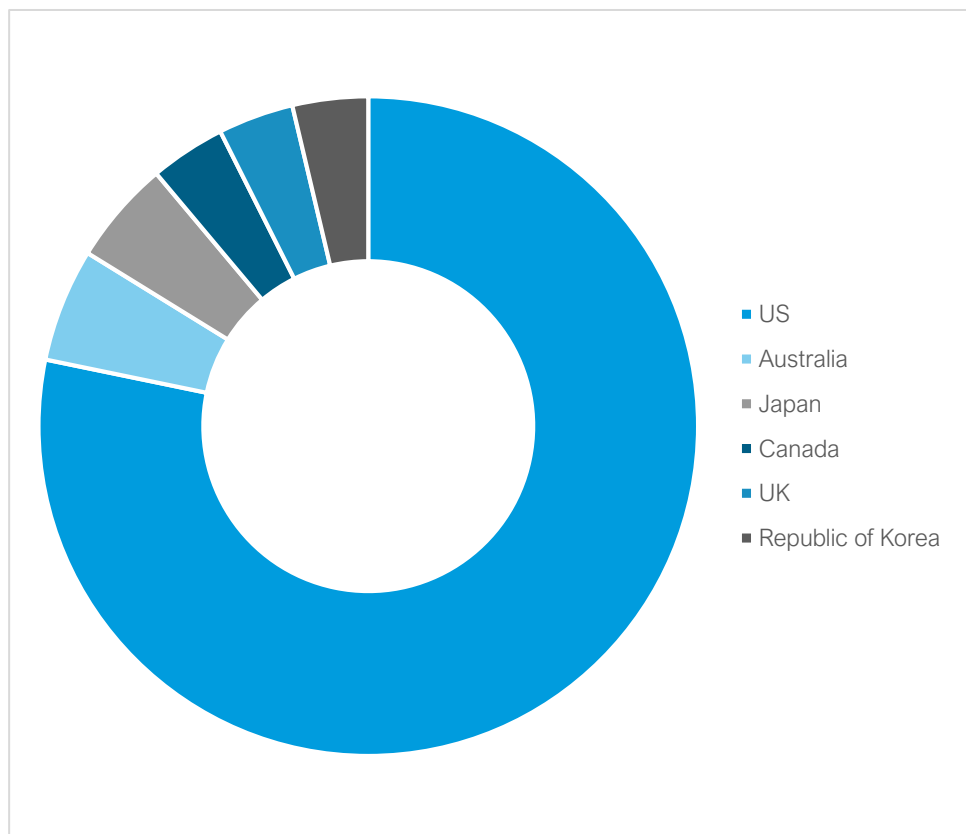
Insightia has released its [latest statistical analysis](#) of global trends in shareholder activist activity for Q1 2021. Some key takeaways from the report are below.

### Global trends

- **Very quiet:** Globally, only 247 companies were publicly subjected to activist demands in Q1 2021. According to the report, this is the lowest level of activity in an opening quarter over the past seven years.

- **Most active regions:**

- Levels of activity continue to be highest in the US where 169 companies were targeted in Q1 2021.
- The next most active regions were: Australia (12 companies targeted); Japan (11 companies targeted); and Canada, UK, the republic of Korea (all with 8 companies targeted).
- Activity was lowest in Malaysia, Austria, Finland, Czech republic and New Zealand (all had only one company targeted during the period).



- **Sectors most targeted:** Globally, financial services companies were the most targeted, accounting for 15% of the overall total number of companies publicly subjected to activist demands. Industrials (14%), health and consumer cyclical (both 13%) were the next most targeted sectors.
- **Large cap companies were the most targeted** (accounting for 37% of the total number of companies publicly subjected to activist demands).

### Proxy voting

- **Pay revolts increased:**

- 49 companies faced pay revolts (ie 20% or more votes against): in Q1 2021. According to the report, this is highest proportion in recent years.
- Pay revolts were most common in the following sectors: 1) consumer defensive (26%); 2) healthcare (25%); 3) consumer cyclical (21%); 4) technology (18%); and 5) industrials sector (17%).
- Support for directors (generally) decreased:
  - Overall, the level of support for directors decreased across (almost) all sectors with the exception of the funds sector where support increased from 97.3% in 2020 to 98% in 2021.
  - The drop in the level of support for directors was greatest in the financial services (drop in support from 97.6% in Q1 2020 to 94.9% in Q1 2021) and real estate sectors (97.3 in Q1 2020 to 94.8% in Q1 2021).

## Australia

- The number of Australia-based companies publicly subjected to activist demands in Q1 2021 was slightly up on the same period in 2020 (10 in Q1 2020 vs 12 in Q1 2021). For context, this is substantially down on 2018/2019 levels (27 companies were targeted during the opening quarters in each case).
- The basic materials and technology sectors were by far the most targeted (each accounting for 25% of the overall total number of companies targeted during the period)
- Board-related demands were the most common accounting for 47% of demands overall.
- Activists have so far secured six board seats. 50% of this total were secured through settlements.

[Source: Activist Insight report: Shareholder Activism in Q1 2021]

**In Brief | A shareholder proposal calling on Chevron to provide an audited report on how a net-zero greenhouse gas by 2050 scenario will affect the company's operations and performance will be put to shareholders at the upcoming meeting after SEC declined Chevron's request to exclude it**

[Source: As You Sow media release 01/04/2021]

## Other Shareholder News

### Ahead of upcoming 'Say on Climate' votes, the ACCR has released suggested voting guidance to assist shareholders in determining whether to approve climate transition plans

In advance of upcoming 'Say on Climate' votes in April and May at Nestle, Moodys, Aena, Glencore, Unilever, S&P Global, Shell and Total, the Australasian Centre for Corporate Responsibility (ACCR) has released its 'initial views' on the issues it considers should guide shareholders in assessing, and ultimately deciding whether to approve, each company's climate transition strategy.

Broadly, ACCR suggests shareholders should vote against plans that do not (among other things):

- include both short term (2021-25) and medium term (2026-2035) emissions reductions targets (including scope 1, 2 and 3 emissions) that 'represent at a minimum 95% of total emissions'
- demonstrate that the short and medium targets set align with the goals of the Paris Agreement. The ACCR emphasises that 'this must be supported by a credible science-based methodology'
- quantify the intended contribution of carbon offsets and negative emissions technology, carbon capture utilisation/storage, 'avoided emissions' and divestment of assets in the context of achieving each short and medium term emissions reduction target set
- demonstrate how future capital expenditure will be aligned with the short and medium emissions reduction targets set
- tie progress towards the achievement of short and medium term emissions reduction targets to executive remuneration. The ACCR suggests that 'any compensation linked to an expansion of fossil fuels extractive activities should preclude a yes vote'

[Source: ACCR media release 12/04/2021]



## Australian Shareholder Association focus areas for 2021: executive remuneration and board capability among the top priorities

The Australian Shareholder Association (ASA) has released a list of issues on which it will focus in FY21. These include the following.

### Board composition and director skills

- **Capability:** The ASA expects boards to have measures in place (eg a 'meaningful' board skills matrix) to ensure they have the optimal mix of diverse views/skills/capability and that any gaps have been identified. The ASA also expects boards to include at least one director with relevant industry experience with the ability to independently evaluate executive proposals.
- **Director workload:** On the issue of 'overboarding' the ASA expects that each director should be able to devote 'adequate time and attention' to their role.

### Executive remuneration

- **Position on government COVID-19 support:** The ASA comments that 'The impact of COVID-19 on companies and their executive remuneration should be examined. Companies should give close consideration to repaying Government-funded COVID-19 payments before rewarding executives or paying dividends'.
- **Executives should not be shielded:** On the issue of pay adjustments, the ASA comments that 'A remuneration framework should not be adjusted upwards on a discretionary basis to compensate selected executives for a company missing performance hurdles. Boards should review their company remuneration outcomes for long-term incentives (LTIs) issued during 2020 that have been in the money shortly after issue and reduce outcomes if appropriate'.

### Risk management

The ASA's expectation is that directors are able to 'identify, manage and communicate financial, cybersecurity and non-financial risks including ESG and its implications for financing capital requirements'.

### Shareholder communication and fairness in capital raisings

The ASA's expectation is that retail shareholders will be 'treated proportionately and fairly in capital raisings when compared with institutional shareholders'.

### Shareholder communications

The ASA expects companies to give shareholders the option to receive communications by mail (rather than electronically).

On the issue of electronic meetings the ASA 'strongly encourage[s] companies to trial hybrid AGMs'.

[Sources: ASA media release 31/03/2021; Focus issues]





# Meetings and Proxy Advisers

## COVID-19 response: Scentre Group shareholders pass judgment on executive remuneration

Scentre Group's AGM was held as a hybrid meeting on 8 April.

**Remuneration:** The resolution to adopt the remuneration report was not carried receiving 51.03% of votes against, constituting a 'first strike'. Separately, the resolution to approve the grant of performance rights to Managing Director and CEO Peter Allen was carried with 72.74% of votes in support (27.26% of votes against).

Ahead of the vote, Scentre Group Chair Brian Schwartz said that based on proxy votes already received, the company expected a 'substantial' vote against the remuneration report. Mr Schwartz defended the adjustments made to remuneration in response to the pandemic, noting that the changes amounted to a 'substantial reduction in earnings' for the executive team. Mr Schwartz also noted that Scentre has not applied for/received any government COVID-19 support payments. Mr Schwartz commented,

'We are disappointed given the time and focus the Board devoted to these important issues on your behalf and the consideration we have given to the outcomes the Group and management delivered in the most uncertain and complex operating environment...

We have spent a lot of time talking with many of our major investors and they understand the issues we faced during this unprecedented period and the complexity of the issues the Board needed to consider in determining our approach. The Board believes we appropriately responded to the circumstances and achieved the best outcome for the Group and you, its investors, with this pandemic specific remuneration structure'.

**Election/reelection of directors:** Guy Russo was elected with 99.97% support and Carolyn Kay was re-elected with 99.01% support.

Margaret Searle was also re-elected 90.43% support.

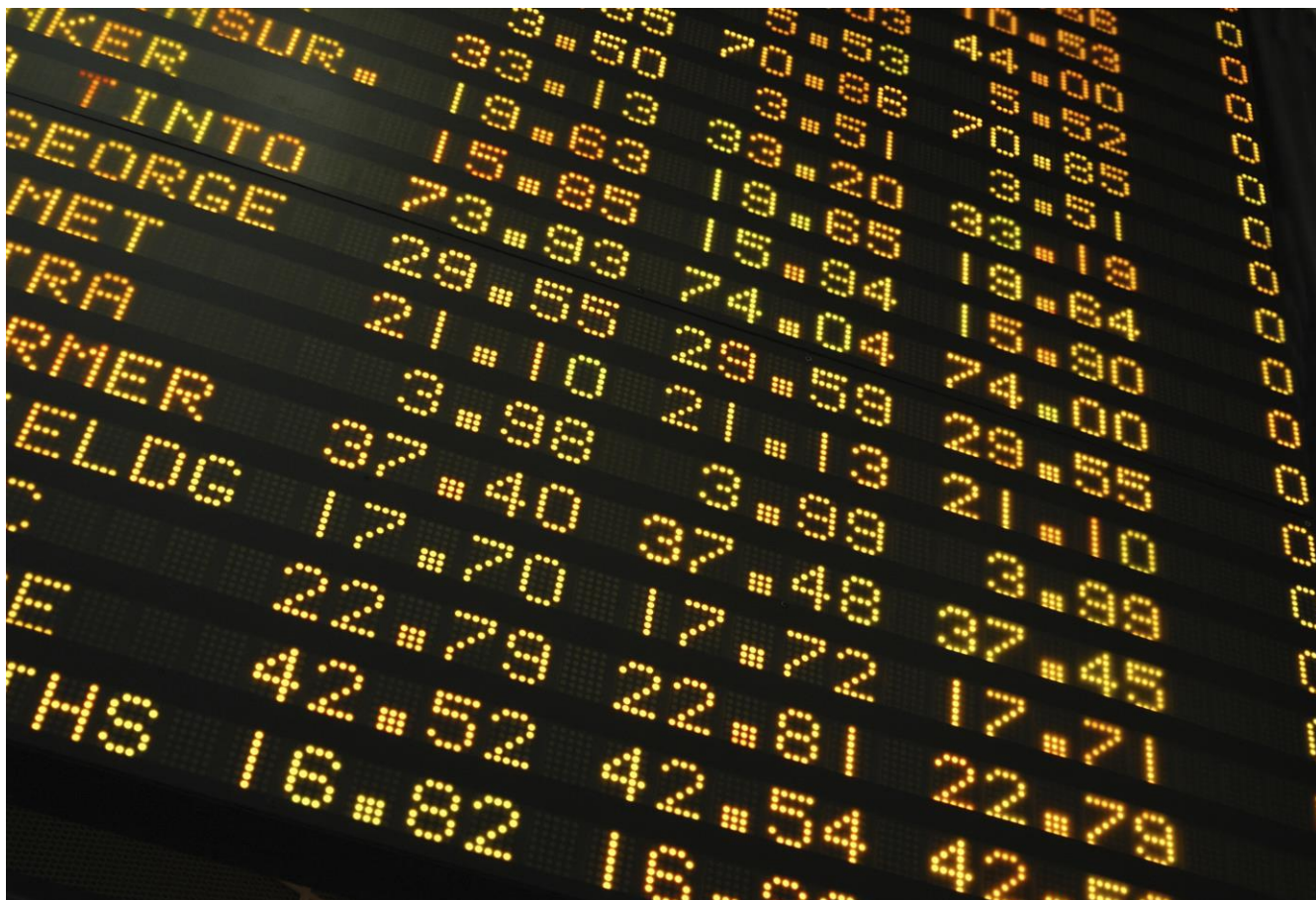
### Worker's rights will be a focus heading into 2021

- In February 2021, the Australasian Centre for Corporate Responsibility (ACCR) withdrew a proposed shareholder resolution after Scentre Group agreed to provide additional disclosure around their processes for identifying and mitigating risks within their cleaning supply chain; how compliance with work, health and safety obligations is monitored' and 'the efficacy' of grievance mechanisms available to workers.
- The ACCR has said it will review Scentre's disclosures and consult with investors and other stakeholders on the reporting.
- The ACCR has also flagged that it intends to release a report in May 2021 outlining the results of review into the reporting the largest publicly listed shopping centre and office owners.

[Sources: Scentre Group ASX Announcements 08/04/2021; 08/04/2021; ACCR media release 01/04/2021]

## Markets and Exchanges

ASX has finalised amendments to ASX Listing Rules relating to online forms, notification of security issues and corporate action timetables



Following consultation on proposed changes to the ASX Listing Rules relating to online forms, notification of security issues and corporate action timetables last year, the ASX has released a [detailed response paper](#) outlining the key issues raised in submissions and the final Listing Rules changes, together with the amendments in final form. The changes are due to come into effect on 5 June (or on such later date as the ASX may notify).

### Some key revisions to the consultation version made in response to the consultation

LISTING RULE	CHANGE
LR 3.10.3E	Extending the deadline for notifying the ASX of a cessation of securities issued under an employee incentive scheme to employees other than key management personnel (KMP) and their associates to require that notification be given within 10 business days after the end of the quarter in which the cessation occurred
LR 3.10.3A	Extending the deadline for notifying ASX of an issue of securities under an employee incentive scheme to employees other than KMP and their associates to require that notification be given within 10 business days after the end of the quarter in which they were issued.
LR 3.10.B	Extending the deadline for notifying ASX of a conversion of convertible securities issued under an employee incentive scheme to employees other than KMP and their associates to require that notification be given within 10 business days after the end of the quarter in which the conversion occurred.

LISTING RULE	CHANGE
LR 2.8.6	Extending the deadline for applying for quotation of securities issued under an employee share incentive scheme to require that notification be given within 10 business days after the end of the quarter in which they were issued, or if they are subject to restrictions on transfer, within 10 business days of the end of the quarter in which those restrictions ceased to apply
LR 2.8.3	Extending the deadline for applying for quotation of securities issued as a result of conversion of convertible securities issued under an employee incentive scheme to require notification within 10 business days after the end of the quarter in which they were converted.
LR 3.21 and 3.22	<p>ASX will not proceed with the proposed new LR 12.13 which would have restricted the cancellation deferral or reduction of previously announced dividends, distributions and interest payments by listed entities.</p> <p>Instead, ASX has made some 'relatively minor changes to LR 3.21 and 3.22' which will require listed entities to notify ASX immediately if they decide to cancel/defer/reduce a dividend or distribution on a quoted security or cancel/defer/reduce an interest payment on a quoted debt security or quoted convertible debt security that it has previously announced it will pay and provide an 'explanation satisfactory to ASX' as to why.</p>
LR 3.8	<p>The final entry in the table in LR 3.8 has been amended to require a listed entity that has conducted a buy-back to lodge an Appendix 3H Notice of cessation of securities with the ASX:</p> <ul style="list-style-type: none"> <li>– in the case of a minimum holding buy-back, within 5 business days of the completion of the buy-back</li> <li>– in all other cases, within 5 business days of giving ASX the final buy-back notice</li> </ul>
LR 19.12	Adding a note to the definition of 'employee incentive scheme' to 'inform listed entities of its [the ASX's] view that most non-executive director share purchase plans are employee incentive schemes for the purposes of the Listing Rules'.

### Other changes (not included in the original consultation)

- Minor drafting changes to LR 2.4, 2.8, 3.8A, 3.10.3, 3.10.3A, 3.10.3B, 3.10.3C, 3.10.3D, 3.10.3E and Appendix 6A (including to the explanatory notes to those rules) that are intended 'to clarify how they fit together with the timetables and form requirements for corporate actions in LR Appendix 6A and with each other'.
- Updating LR Appendix 3A.6 Notification of call/instalment on quoted partly paid equity securities to incorporate some minor drafting improvements.
- Deleting LR 3.10.2.4 which requires a listed entity to notify ASX of the details of a call to be made on its partly paid securities via an Appendix 3A.6 (this requirement is now addressed in the new LR 3.10D);
- Amending the timetable for equal access scheme buy-backs in section 11 of Appendix 7A 'to make it clear that the 15 business day offer period is a minimum period rather than a fixed period'.

[Sources: ASX media release; Consultation Response]

# Financial Services

## Consumer credit: National Consumer Credit Protection Amendment (Small Business Exemption) Regulations 2021 registered

### Context

- In April 2020, the [National Consumer Credit Protection Amendment \(Coronavirus Economic Response Package\) Regulations 2020](#) temporarily exempted certain credit providers from responsible lending obligations under the National Consumer Credit Protection Act 2009 where particular conditions were met (the small business exemption). You can find a brief summary of the measures [here](#).
- On 9 December, the government introduced a Bill – [National Consumer Credit Protection Amendment \(Supporting Economic Recovery\) Bill 2020](#) – that proposes, among other things, to remove 'the ambiguity regarding the application of consumer lending laws to small business lending'. If passed, Schedule 1 of the Bill would remove existing responsible lending obligations relating to the unsuitability of credit contracts, except in relation to small amount credit contracts (SACCs), SACC-equivalent loans by authorised deposit-taking institutions (ADIs), and consumer leases. You can find a summary of the proposed measures [here](#) and a status update on the Bill [here](#).

### New regulations registered

- The [National Consumer Credit Protection Amendment \(Small Business Exemption\) Regulations 2021](#) were registered on 1 April 2021 and commenced on 2 April. According to the explanatory memorandum the purpose of the regulations is to 'align the end of the small business exemption' with the proposed removal of responsible lending obligations in the [National Consumer Credit Protection Amendment \(Supporting Economic Recovery\) Bill 2020](#).

[Source: National Consumer Credit Protection Amendment (Small Business Exemption) Regulations 2021]

## Hayne implementation: ASIC has released guidance on how to comply with new requirements related to the provision of insurance complaints/settling services

### Context

- Following the commencement of the Financial Sector Reform (Hayne Royal Commission Response) Act 2020 on 1 January 2021, claims handling and settling services are a 'financial service' under the Corporations Act 2001 (Cth).
- Certain specified persons who provide these services will be required to hold an Australian Financial Services licence (AFSL) authorisation (or become an authorised representative) in order to do so/continue to do so.

### ASIC reminder of the need to submit an application as soon as possible

ASIC has reminded insurance claims handling firms of the need to submit their complete application and have it accepted by ASIC for assessment as soon as possible, and by no later than 7 May 2021 in order to be able to access transitional arrangements that will allow them to continue to provide claims handling/settlement services after 30 June 2021 for a six month transition period.

ASIC cautions that:

- applications received after 7 May 2021 risk rejection by the regulator. Were this to occur too close to the 30 June deadline, it could leave applicants with insufficient time to rectify/resubmit their application in time.
- continuing to provide claims handling and settling services from 1 July 2021 onwards (without submitting a complete application to ASIC by/on 30 June 2021) will constitute (unlicensed conduct).

Deputy Chair, Karen Chester commented that to date, ASIC has received very few applications and urged firms to lodge their applications as soon as possible. She said,

'Time is running out for firms to lodge their applications with ASIC. To date we've received fewer than 15 applications for the new claims handling and settling service. Some applications received have also needed to be re-submitted because of their poor quality. We are concerned that firms are running the risk of not



submitting a complete application in time to get the benefit of the legislated transition period. Firms need to submit an application no later than 7 May 2021. Failing to do so poses a real risk that these firms will have to stop providing claims handling and settling services after 30 June 2021.'

## Guidance on how to apply for an AFSL

ASIC has released an information sheet – [INFO 253](#) – outlining:

- what a claims handling and settling service is, who can handle/settle claims on behalf of an AFS licensee and how the licensing regime applies
- when AFS licence/variation is required
- how to apply
- ASIC's approach to assessing applications

The information sheet also refers to existing regulatory guidance on how to meet the general obligations under section 912A of the Corporations Act 2001 (Cth), and indicates how the obligations may be tailored to claims handling.

## Exclusions from new requirements are still to be settled: Regulations setting out exclusions from the requirements applying to 'claimant intermediaries' are still to be finalised

Treasury [consulted](#) earlier in the year on [draft regulations](#) setting out a proposed list of persons who would be excluded from the requirements applying to a 'claimant intermediary' (eg the requirement to hold an AFSL when handling claims) under the Corporations Act.

The proposed list of persons to be excluded are: a) mortgage brokers and mortgage intermediaries; b) insurance brokers; c) qualified accountants; d) veterinarians; e) travel agents; f) financial advisers; g) property managers; estate managers and h) public trustees.

As yet, the regulations have not been finalised. ASIC comments that once final, it will update INFO 253.

[Source: ASIC media release 08/04/2021; INFO 253: Claims handling and settling: How to comply with your AFS licence obligations]

## FASEA chair reappointed

Minister for Superannuation, Financial Services and the Digital Economy, and Minister for Women's Economic Security, Senator Jane Hume, has announced that Catherine Walter has been reappointed to her role as the part time Chair of the Financial Adviser Standards and Ethics Authority (FASEA) and will continue to work with the Board consulting on and refining the Standards for Financial Advisers that remain under FASEA's responsibility until the organisation is wound up. No timeframe is specified for this in the statement.

The statement reiterates that FASEA's standard making functions will be transferred into Treasury and the remaining elements of FASEA's role including administering the adviser examination will be incorporated into the Financial Services and Credit Panel within the Australian Securities and Investments Commission.

[Source: Senator Jane Hume media release 12/04/2021]

## Offshore reinsurers: APRA is consulting on proposed changes to LPS 117 Capital Adequacy: Asset Concentration risk charge

The Australian Prudential Regulation Authority (APRA) is consulting on proposed updates to Prudential Standard LPS 117 Capital Adequacy: Asset Concentration Risk Charge (LPS 117). A marked up version of the proposed draft standard is [here](#). APRA has also released a [response paper](#) setting out the regulator's response to stakeholder views provided on the first round of consultation on proposed changes.

### Purpose of the proposed revisions

The proposed changes are intended to address concerns about the increased use of offshore reinsurers by life insurers, including in the context of the group risk market.

Among other things, the proposed changes would impose an aggregate limit on the exposure of life insurers to offshore reinsurers, which are not regulated by APRA.

The consultation also proposes changes that will 'provide greater clarity on regulatory requirements, facilitate the use of risk mitigation techniques and minimise the regulatory burden associated with bespoke amendments for individual entities'.

Announcing the consultation, APRA Deputy Chair Helen Rowell said,

'The proposed revisions to the prudential standards for life insurers are necessary to address the potential risks to policyholders from growing use of offshore reinsurance. But APRA has also sought to balance this by still enabling the benefits of competition and innovation from the participation of offshore reinsurers in the Australian life insurance market'.

### Timing

- The deadline for submissions on the proposed changes to LPS 117 is 25 June 2021.
- APRA expects to release a final standard by the end of 2021.
- APRA proposes that the new standard would come into effect on 1 July 2023.

[Sources: APRA media release 08/04/2021; Draft prudential standard (mark up); Response paper]



## RG 271: ASIC calls on funds to start preparing now for the commencement of new IDR requirements

The updated standards/requirements in Regulatory Guide 271: Internal dispute resolution (RG271) will commence on 5 October 2021. Ahead of this, the Australian Securities and Investments Commission (ASIC) Senior Executive Leader, Superannuation Jane Eccleston has written an article outlining ASIC's expectations around compliance and flagging the steps trustees should be taking now to prepare.

### Key Takeaways

- ASIC expects trustees to 'seek advice on how their operations will meet the requirements of RG 271'.

- RG 271 will likely require trustees to thoroughly review existing processes, systems and resources to ensure compliance. As some changes are likely to take time to implement - eg changes to information technology and administration systems for complaints management/data capture and staff training - trustees are encouraged to commence the process now (if they have not already done so)
- Meeting the shorter timeframes for resolving complaints:
  - In terms of responding to complaints ASIC expects that: a) the issues the complainant has raised have been identified and addressed; b) the response provided is 'tailored and includes facts that support the findings', and; c) that the response is 'sufficiently detailed reasons are given which are proportionate to the complexity of the complaint so that the complainant can understand the decision'.
  - It's suggested that achieving this within the 45 day maximum timeframe for resolving complaints (or 90 days for death benefit objections) will likely mean that trustees will need to review their existing procedures/processes as well as the workload of existing complaints staff.
- Oversight of outsourced arrangements: Trustees will also need to ensure that there is appropriate oversight of any outsourced arrangements including ensuring that any third parties involved in complaints handling are able to meet the shorter maximum timeframe for resolving complaints as well as the data collection and reporting requirements.
- Ensuring adequate staffing and systems: The new standard requires that a trustee's IDR processes are 'adequately resourced so that it operates fairly, effectively and efficiently'. Trustees are expected to regularly review whether its IDR process is adequately resourced; ensure there is a sufficient number of skilled staff to deal with complaints within the required maximum timeframe; and ensure that staff are appropriately trained and have the necessary authority to be able to resolve complaints. Ms Eccleston comments
 

'We anticipate the new IDR standards may require trustees to invest in skilled staff and systems. Trustees may need to revisit how they structure delegations, including authority to make decisions and financial delegations, to ensure relevant staff are sufficiently empowered to resolve complaints fairly and efficiently, and to avoid delays in resolving complaints under the shorter timeframes. Trustees should also take into account the fact that levels and complexity of complaints can fluctuate, so they should consider how they use flexible resourcing'.

  - IT system resources: Ms Eccleston writes that 'ASIC will be encouraging trustees to think about how best to structure systems to support complaints handling staff in all areas of their business. Trustees should also consider what systems they need to put in place to make full use of the insights from complaints data. ASIC encourages organisations with the ability to introduce sophisticated machine learning technologies to their complaints handling systems and analysis to do so'.
- Organisational culture: ASIC considers IDR to be an indicator of a superannuation fund's culture. ASIC's expectation is that trustees ensure that the 'right governance arrangements and operational transparency [are] in place, underpinned by a member centric approach... Having IDR procedures that are responsive and effective is one way trustees can prove that they are delivering for their members'.
- Identifying and responding to systemic issues: ASIC expects trustees to make use of complaints data to provide insights into the effectiveness of systems/processes and provide the basis for improvements. Ms Eccleston refers readers to Section D of RG 271 which sets standards for IDR procedures around identifying and managing systemic issues related to complaints.
- ASIC's expectation is that the review of IDR processes/procedures is integrated into broader incident and risk management processes to help ensure potential systemic issues are identified, reported and acted on as early as possible. Ms Eccleston writes:
 

'ASIC expects staff to regularly analyse complaints datasets and to escalate any possible systemic issues to the appropriate areas for investigation. If an investigation confirms that a systemic issue exists, we expect trustees to identify impacted consumers and rectify the issue promptly. Staff should also provide complaints reports to senior management and board committees in a timely manner which cover any systemic issue investigations, including the actions that have been taken to resolve them'.
- ASIC intends to 'check in with industry at various stages of implementation and assess whether its expectations about preparation are being met'.

[Source: ASIC media release 06/04/2021]

## The ABA has released updated industry guidelines for preventing and responding to financial abuse and preventing and responding to domestic an family violence

The Australian Banking Association (ABA) has announced the release of updated industry guidelines for [preventing and responding to financial abuse \(including elder financial abuse\)](#) (last updated in 2014) and [preventing and responding to family and domestic violence](#) (last updated in 2016).

The ABA states that the policies and practices outlined in both sets of guidelines have been updated to align with the new Banking Code and to reflect improved industry practice in identifying and responding to abuse.

Changes include guidance around: specialised training for staff, making it easier for customers to communicate with the bank safely and confidentially; reporting to relevant authorities and referring customers to external support.

Announcing the release of the guidelines ABA CEO Anna Bligh said that the guidelines

... 'recognise cases of financial abuse increase during times of major crisis, such as the COVID-19 pandemic, droughts, floods and bushfires. They also modernise banks' approach to the issue, reflecting the uptake of digital banking and new risks such as the use of transaction description fields to threaten, harass and intimidate. Bank staff are well trained to spot red flags and respond to cases of financial abuse. These guidelines will ensure that protection of vulnerable customers remains a key priority", Ms Bligh said.

[Source: ABA media release 04/04/2021]

## In Brief | ASIC has made a product intervention order banning the issue and distribution of binary options to retail clients. The ban will take effect from Monday 3 May 2021 and remain in place for 18 months, after which it may be extended or made permanent

[Source: ASIC media release 01/04/2021]

## In Brief | Regulations to support eligible rollover fund closure - Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021 – were registered on 1 April 2021 and commenced on 2 April. The regulations are intended to support amendments made under the Treasury Laws Amendment (Reuniting More Superannuation) Act 2021 (Cth)

[Source: Treasury Laws Amendment (Reuniting More Superannuation) Regulations 2021]

## In Brief | ASIC has reminded companies of their obligations to comply with financial reporting obligations, and said that it will continue to take action to ensure compliance. ASIC took action against three companies for financial reporting failures between 1 July 2020 and 31 December 2020

[Source: ASIC media release 31/03/2021]





# Risk Management

## Top Story | Four lessons for aged care from financial services

The aged care and financial services sectors have both recently been through Royal Commissions. And while there are many differences between the two sectors, there are also some key similarities.

MinterEllison have released an article identifying key lessons for the aged care sector to take forward. You can find the full text [here](#).

## The government has released its formal response to the Respect@Work report

On 8 April 2021, the government released its [formal response](#) (roadmap) to the Australian Human Rights Commission's Respect@Work report. You can find the executive summary of the report [here](#).

The government's roadmap responds to all 55 of the report recommendations, all of which the government has said it supports in whole, in part or in principle or has 'noted'.

Announcing the release of the roadmap, the government said that it is intended to provide a 'clear path for action to achieve meaningful cultural change across the nation and to create safer workplaces for all Australians'.

### Response to some key recommendations

Below is a brief overview of the government's response to some key recommendations.

#### Changes to anti-discrimination Law

The government has said it intends to develop 'targeted amendments' to the Sex Discrimination Act 1984, to ensure that it; reflects modern expectations and other relevant legal frameworks and has appropriate coverage'.

These changes will include amending the Sex Discrimination Act to:

- clarify that it extends to judges and members of parliament. The government will also work with states and territories to remove the current exemption of state public services.
- amend section 105 of the Sex Discrimination Act to ensure it applies to sexual harassment
- 'ensure greater alignment with model WHS laws'
- 'make the system for addressing sexual harassment in the workplace easier for employers and workers to understand and navigate'.

### Introducing a positive duty for employers to take reasonable steps to eliminate sex discrimination, sexual harassment and victimisation in the workplace?

Recommendation 17 of the report recommended that a positive duty on all employers to take reasonable steps to prevent/eliminate sexual harassment, sexual discrimination and victimisation as far as possible in the workplace, be introduced into the Sex Discrimination Act.

In its response, the government 'noted' the recommendation observing that under the model WHS laws persons conducting a business already have a duty to take reasonably practicable steps to ensure that all persons in the workplace are not exposed to health and safety risks including sexual harassment.

In light of this, the government has said that it will review whether the recommended change would add to the existing complexity of existing requirements before determining whether to make the change. The response document states that,

'Noting that a positive duty already exists and given the Report's findings that the current system for addressing workplace sexual harassment is complex and confusing for victims and employers to navigate, the government will assess whether such amendments would create further complexity, uncertainty or duplication in the overarching legal framework'.

## **Increased investigative powers for the Australian Human Rights Commission?**

Recommendation 19 of the report recommends that the Australian Human Rights Commission Act (AHRC Act) be amended to provide the AHRC with a broad inquiry function to inquire into systemic unlawful discrimination, including systemic sexual harassment. Specifically, recommendation 19 recommends that the AHRC be given powers to require the giving of information, the production of documents and the examination of witnesses (backed up by penalties for non-compliance).

The government has 'agreed in part' with this recommendation noting that the AHRC already has a 'series of existing functions to conduct investigations and generally works cooperatively with organisations'. The response document raises concerns that the 'AHRC adopting the role of investigator as a matter of course may undermine the effectiveness of the cooperative model'.

The government has said that it will however consider 'models for an inquiry function in circumstances where the matter for inquiry is referred by government'.

## **Allowing unions/representative groups to bring representative claims to court?**

Recommendation 23 recommended that the AHRC Act be amended to allow unions and other representative groups to bring representative claims to court, consistent with the existing provisions in the AHRC Act that allow unions and other representative groups to bring a representative complaint to the Commission.

The government has 'noted' the recommendation commenting that there is an existing mechanism to enable representative proceedings in the Federal Court.

## **Review of the Fair Work System to expressly prohibit sexual harassment**

Recommendation 28 recommended the Fair Work system be reviewed to ensure and clarify that sexual harassment, (using the definition in the Sex Discrimination Act) is expressly prohibited.

The response document commits the government to undertaking a review the Fair Work system 'once the government's response to the proposed changes to the Sex Discrimination Act (recommendation 16) have been implemented and their impact assessed'.

The government will also consider amendments to the AHRC Act to make it explicit that any conduct that is an offence under section 94 of the Sex Discrimination Act can form the basis of a civil action for unlawful discrimination (Recommendation 21).

## **More time to make a complaint**

Recommendation 22 recommends that the Australian Human Rights Commission Act be amended so that the President's discretion to terminate a complaint under the Sex Discrimination Act on the grounds of time does not arise until it has been 24 months since the alleged unlawful discrimination took place. The government has agreed to implement this recommendation.

## **Costs protection provision**

Recommendation 25 recommends that the government amend the Australian Human Rights Commission Act to include a cost protection provision consistent with section 570 of the Fair Work Act 2009 (Cth).

The response document notes that 'the determination of costs orders is already at the discretion of the court', but that the government will 'review cost procedures in sexual harassment matters to ensure they are fit for purpose, taking into account the issues raised by the Report'.

## **A new 'stop sexual harassment' order?**

Recommendation 29 of the report recommends the creation of a 'stop sexual harassment order' in the Fair Work Act (Recommendation 29).

The response document indicates that the government 'agrees in principle' to the recommendation but notes that the government is 'of the view that the objective will be achieved with greater simplicity by clarifying that a "stop bullying order" is available in the context of sexual harassment'.



## Sexual harassment can be a valid reason for dismissal

- The government has agreed to implement Recommendation 30 of the report which recommends that section 387 of the Fair Work Act be amended to clarify that sexual harassment can be conduct amounting to a valid reason for dismissal in determining whether a dismissal was harsh, unjust or unreasonable.
- The government has also agreed to implement Recommendation 31 which recommends that the definition of 'serious misconduct' in the Fair Work Regulations be amended to include sexual harassment.
- The government has agreed to implement Recommendation 32 which recommends that the Fair Work Commission (FWC) release additional guidance material for all employers relating to unfair dismissal, which includes dismissal relating to sexual harassment. The government has said it will ask the FWC to update existing guidance, noting that as it is an independent agency, implementation of the recommendation is ultimately subject to its agreement.
- The government has agreed to implement Recommendation 33 which recommends that the Fair Work Ombudsman (FWO) update its employee information and guidance relating to workplace rights under the Fair Work Act to include sexual harassment, such as amending the Fair Work Information Statement. The government has said that it will ask the FWO to update its guidance again noting that the FWO is an independent agency and that implementation is therefore subject to its agreement.

## Funding front line services

- The government has agreed to implement recommendation 53 which recommends that all Australian governments 'provide increased and recurrent funding to community legal centres, Aboriginal and Torres Strait Islander Legal Services, and legal aid commissions to provide legal advice and assistance to vulnerable workers who experience sexual harassment, taking into account the particular needs of workers facing intersectional discrimination'.

The government has said that the additional funding will be provided in the 2021-22 Budget process and will increase access to specialised legal advice on employment and discrimination.

- The government has agreed to engage with state and territory governments to increase funding for women's legal centres as recommended by Recommendation 49. Recommendation 49 recommends that governments provide 'increased and recurrent funding to working women's centres to provide information, advice and assistance to vulnerable workers who experience sexual harassment, taking into account particular needs of workers facing intersectional discrimination. Australian governments should consider establishing or re-establishing working women's centres in jurisdictions where they do not currently exist'.
- The government has said that it will 'consider additional funding to promote the 1800RESPECT hotline and raise community awareness of its services' as part of the 2021-22 budget process as well as engaging with states and territories on the promotion and 'appropriate resourcing' of 1800RESPECT. Recommendation 54 recommended that the government 'promote the 1800RESPECT hotline and ensure it is adequately resourced to expand its services to provide appropriate psychological support and referral to people affected by workplace sexual harassment, and collect and maintain de-identified and disaggregated data on contacts regarding workplace sexual harassment'.
- The government has said it will engage with state and territory governments to develop joint funding arrangements to fund psychological support for people impacted by sexual harassment (Recommendation 55)

## National action plans to prevent sexual harassment and violence against women

The government has agreed to implement Recommendation 5 which recommends that the Council of Australian Governments agrees to incorporate sexual harassment as a key area for action and investment under any national framework to address violence against women. Specifically the response document states that the government will 'consider' the recommendation, with state and territory governments, in the development of the next National Plan.

The government has also agreed to work with state and territory governments to encourage them to ensure that their strategies for preventing violence against women are informed by Change the Story, and to ensure that the next National Action plan is also informed by Change the Story (recommendation 7).

## Education

- The government will implement recommendation 10 by developing age appropriate education resources to ensure children/young people receive school based respectful relationships education that addresses the drivers of gender-based violence including sexual harassment. The government will engage with state and territory governments on their use in government and non-government schools.

- The government has also agreed to implement recommendation 11 of the report which recommends that the all tertiary and higher education providers deliver evidence based information/training on sexual harassment for staff and students that addresses the drivers of gender-based violence and includes content on workplace rights. The government has said it will 'continue to engage with educational institutions, and with the states and territories on vocational education and training through the Skills Reform agenda, to strengthen supports for staff and students'.
- Recommendation 12 recommends that the government should support smaller tertiary and higher education providers who lack the resources/expertise to deliver the training/provide the information in recommendation 11 through the Tertiary Education Quality Standards Authority and the Australian Skills Quality Authority. The government has indicated that it will work with the states and territories and with education providers to support the implementation of the recommendation.

**The AHRC has welcomed the government's response but cautioned that failure to introduce a positive duty to take reasonable and proportionate measures to eliminate sexual harassment in the Sex Discrimination Act would be a missed opportunity**

In a statement, Sex Discrimination Commissioner Kate Jenkins welcomed the government's response stating,

'The fact that the Government has accepted in whole, in part, in principle or noted all 55 recommendations is a credit to the thousands for Australians who participated in the National Inquiry, and those who have used their voices to call for change...The Commission welcomes the Government's focus on clarity, safety, prevention and evidence and is keen to see the investment to support this action in the forthcoming budget'

Ms Jenkins cautions however that failure to implement a positive duty to take reasonable steps to eliminate sexual harassment would be a missed opportunity. She states,

'It will be a missed opportunity to not introduce a positive duty to take reasonable and proportionate measures to eliminate sexual harassment in the Sex Discrimination Act, so I am happy to assist Government with the evidence provided to the National Inquiry as they further assess this recommendation'.

[Sources: Government's formal response to the Respect@Work report: A Roadmap for respect: Preventing and addressing sexual harassment in Australian workplaces; Joint media release: Prime Minister Scott Morrison and Attorney General Michaelia Cash 08/04/2021; AHRC media release]

**Why not adopt the Sex Discrimination Act Amendment (Prohibiting All Sexual Harassment) Bill?**

In short statement, independent MP Zali Steggal welcomed the government's endorsement of the recommendations and called on the government to adopt the [Sex Discrimination Act Amendment \(Prohibiting All Sexual Harassment\) Bill](#) which was introduced as a Private Member's Bill on 15 March.

Broadly, the Bill proposes to:

- Introduce a 'blanket prohibition' on sexual harassment into Sex Discrimination Act to 'ensure that the act of sexual harassment is prohibited in all situations, rather than exclusively those named in the Act'. The explanatory memorandum makes clear that the proposed changes are intended to clarify that the prohibition is intended to apply in all circumstances, including to those working in the gig economy and those that were 'historically overlooked such as statutory appointees including judges and members of parliament'.
- The Bill also 'addresses identified shortcomings in the legal circumstances to provide protection against sexual harassment that may occur between witnesses and lawyers; lawyers and judicial officers or court staff; solicitors and barristers; or between barristers'.
- Proposed amendments to section 105 of the Sexual Discrimination Act would also expand the provisions which prohibit the 'aiding and abetting' of sexual discrimination to also include a prohibition of 'aiding and abetting' sexual harassment.

Ms Steggal commented,

'The Attorney General Michaelia Cash has said the Government wants to simplify the definition of sexual harassment. Well, you can't make it any clearer than in the Sex Discrimination Act Amendment (Prohibiting All Sexual Harassment) Bill tabled to Parliament on March 15. I am pleased the Government has adopted the recommendations, but this needs to happen without delay. The Sex Discrimination Act Amendment (Prohibiting All Sexual Harassment) Bill is there and ready to be adopted. The changes proposed are clear, tangible and consistent with the recommendations from the Respect@Work report and the Law Council's National Action Plan to Reduce Sexual Discrimination in the Legal Profession, which all included significant periods of consultation. We need action not words. There is already a blueprint on the table and if the Prime

Minister wants a multi-partisan approach to stop sexual harassment, then the Government should adopt the Sex Discrimination Act Amendment (Prohibiting All Sexual Harassment) Bill at the earliest opportunity when Parliament resumes in May'.

[Source: Zali Steggal media release 08/04/2021]

## In Brief | Guidance issued: Comcare the Federal work health and safety regulator has released a number of resources to assist employees and employers in preventing/responding to workplace sexual harassment

[Source: Comcare workplace sexual harassment resources]

## Climate Risk

### New Zealand to mandate TCFD-aligned reporting for the financial sector

The New Zealand government has introduced a new Bill – [the Financial Sector \(Climate-related Disclosure and Other Matters\) Amendment Bill](#) - which will introduce new mandatory non-financial reporting requirements for the financial sector. Reporting entities will be required to disclose the impacts of climate risk on their business and explain how these risks/opportunities will be managed.

#### Why is the Bill being introduced?

According to the Explanatory Note, the purpose of the Bill is to:

- 'ensure that the effects of climate change are routinely considered in business, investment, lending, and insurance underwriting decisions'
- help smooth the transition to a low emissions economy through facilitating 'smarter, more efficient allocation of capital'
- assist reporting entities to 'better demonstrate responsibility and foresight in their consideration of climate issues'

The Explanatory note makes clear that the government considers access to clear information to be crucial.

'Financial markets globally can play a major part in shifting investment away from emission-intensive activities and towards low-emission, resilient development pathways. However, this unprecedented economic transformation will require the disclosure of consistent, comparable, reliable, and clear information about climate-related risks and opportunities that are, for the most part, not being made available to investors at present'.

#### What does the Bill propose to do?

Broadly, if passed the Bill would:

- Introduce new mandatory climate-related disclosure requirements for certain entities that are considered under section 461K of the Financial Markets Conduct Act 2013, to have a higher level of public accountability. These include for example: listed issuers, large registered banks, licensed insurers and managers of managed investment schemes. Announcing the introduction of the Bill, Climate Change Minister James Shaw said that if passed, the new requirements will apply to approximately 200 organisations.
- The disclosures will be aligned with the TCFD framework and made in accordance with new standards to be issued by the External Reporting Board (the XRB).
- The Financial Markets Authority will have responsibility for oversight and enforcement of compliance with the new reporting obligations.
- The Bill also provides for the XRB to issue guidance on a wider range of ESG and non-financial matters that can be applied by entities of a voluntary basis. This is intended to provide guidance to preparers of financial statements on best practice ESG and related disclosures and to improve the quality of disclosures.

#### Timing?

- If passed, it's proposed that the new disclosure requirements would be required for financial years commencing in 2022 (ie the first disclosure would be made in 2023).



## Climate lobbying by industry associations: Shell may exit from the Queensland Resources Council and separately Equinor has exited APPEA over misalignment on climate issues

### Shell is reassessing its membership of the Queensland Resources Council

Shell has released its [2021 climate review](#) of industry association membership which assesses the alignment between Shell's net zero emissions commitment and the climate policy and advocacy positions of 36 industry associations of which Shell is a member.

The review identified material misalignment with one association: the Queensland Resources Council (QRC). In consequence, Shell is reassessing its QRC membership.

Shell has called on the QRC to 'update its position on energy and climate change' to 'explicitly support': a) the goal of the Paris Agreement; b) carbon pricing; and c) 'policies to encourage fuel-switching to lower-emissions energy sources in power generation'. Shell has also called on the QRC to:

- cease its advocacy of any new unabated coal fired power generation;
- state its support for the direct regulation of methane emissions and reductions in methane emissions throughout the natural gas supply chain;
- state its support for capture and storage in the context of support for the goal of the Paris Agreement and net-zero emissions.

Shell plans to make a decision about its continued membership in October 2021. Until then, it will monitor any changes in the QRC's policy and advocacy positions.

The report also identified 'some misalignment' with seven other associations: The American Petroleum Institute (API); the Chamber of Minerals and Energy of Western Australia (CME); Electric Power Supply Association (EPSA); National Association of Manufacturers (NAM); Texas Oil & Gas Association (TXOGA); the US Chamber of Commerce (USC); and WindEurope.

Shell's 2019 report identified some misalignment at three associations in this group (API, NAM, and USC), the other four have been reviewed for the first time.

At this stage, Shell will continue membership of all seven associations. Shell comments that this is because, 'there is evidence that their positions are changing, and we believe we can have a greater positive impact within the associations than outside them... We also see a broader value in our memberships, for example on health and safety regulation and sharing of industry best practices. We will continue to closely monitor these associations and be transparent about where we find differences'.

### Equinor has exited APPEA over misalignment on climate issues

The Australasian Centre for Corporate Responsibility (ACCR) has welcomed Norwegian state owned oil company Equinor's departure from the Australian Petroleum Production and Exploration Association (APPEA) because of misalignment on climate related issues including APPEA's lack of clarity on the use of Kyoto carryover credits and carbon pricing and APPEA's lobbying for exemptions from climate policy for the LNG industry.

In a statement welcoming Equinor's announcement, ACCR Director of Climate and Environment Dan Gocher suggested that other APPEA members will now be under pressure to call on APPEA to shift its approach or to follow Equinor's lead in exiting. Mr Gocher commented,

'Equinor may be the first oil major to exit APPEA, but it won't be the last. APPEA's record of advocacy is completely at odds with Australia's commitment to the Paris Agreement. If other members of APPEA—and their shareholders—expect to be taken seriously on climate, they should demand a stop to its advocacy for gas expansion, or exit.'

[Sources: Shell Industry Association Report 2021; ACCR media release 12/04/2021]

## New appointments to the Climate Change Authority announced

Minister for Energy and Emissions Reduction Angus Taylor has announced three new appointments to the Climate Change Authority.

Grant King (former President of the Business Council of Australia, former Origin and Boral executive and current chair of HSBC Australia, CWP Renewables and GreenCollar) has been appointed as Chair of the Authority for a four year term. Mr King will take over from Chair Dr Wendy Craik, who has led the Authority since 2015.

Two new members have also been appointed:

- Susie Smith (CEO of the Australian Industry Greenhouse Network); and
- John McGee (former director at Air Services Australia, the Private Health Insurance Administrative Council and Westpac Funds Management).

Ms Smith and Mr McGee will take over from outgoing members Kate Carnell, Stuart Allison and John Sharp and join ongoing members Mark Lewis, Russell Reichelt and Chief Scientist Dr Cathy Foley.

### Response to the new appointments

The National Farmers' Federation has welcomed the new appointments.

Independent MP Zali Steggal has questioned the independence of the new appointments and their ability to advise on the best path for transitioning to a net zero economy. Ms Steggal commented that the new appointments are 'completely at odds with the Authority's purpose to give independent advice on climate, science and policy to the Government'.

[Sources: Minister for Energy and Emissions Reduction Angus Taylor 09/04/2021; National Farmers' Federation media release 09/04/2021; MP Zali Steggal media release 09/04/2021]

## Risk of cyber-attacks and climate risk are among the top risks to Australia's continued financial stability says the RBA

The Reserve Bank of Australia has released its latest [Financial Stability Review](#). Overall the report found that financial institutions in Australia and globally have proven to be resilient to the economic/health shock of the COVID-19 pandemic. However, the report cautions that a number of key risks must be carefully managed if this stability is to be maintained.

### Key risks to financial stability

The report comments that key risks to Australia's financial stability are similar to those facing other nations. These include the following (among others).

#### Cyber Risk

The report identifies the risk of cyber-attack as a 'growing risk' to Australia's (and to global) financial stability and calls on financial institutions to prioritise hardening their defences and ensuring they have appropriate recovery plans in place.

The RBA comments that

'Recent cyber-attacks have demonstrated the increased sophistication of perpetrators and the risks to financial institutions in Australia and other countries. Financial institutions globally typically rate cyber as one of the most substantial risks they face and it is a focus for regulators. Large financial institutions, which are more systemically important, have the scale for substantial investment on cyber security. However, with a very large number of attacks, there remains the likelihood that even large financial institutions or critical financial market infrastructure will at some point be impacted, possibly via third-party providers. Substantial cyber-attacks could risk financial stability if, for example, they corrupt significant data or if they affect large parts of the financial system or critical nodes. Given this, it is crucial that financial institutions and systems not only take preventative actions, but enhance resilience by planning recovery actions to cyber security breaches'.

## Climate Risk

In the longer term, the report identifies the challenges associated with the transition to a low carbon economy and the broader range of risks associated with climate change as posing risks to financial institutions if they are not appropriately managed. The report comments,

'These [risks associated with climate change and the transition to a low carbon economy] do not currently pose a substantial risk to financial stability, but they could over time if climate change risks to Australian financial institutions grow and are left unaddressed'.

## Other risks

- An 'uneven' COVID-19 recovery could pose risks to the stability of the financial system and were the recovery to stall, vulnerable households and businesses would face particular challenges. The report comments that the recovery remains 'dependent on the extent of any new virus outbreaks, and the timely and widespread distribution of effective vaccines'.
- Risk of 'excessive borrowing': The report comments that 'cyclically low interest rates and rising asset prices' combined with the potential weakening of lending standards could lead to excessive borrowing exposing borrowers and financial institutions to increased risk in the case of a price correction in asset prices.

[Source: RBA media release RBA Financial Stability Review April 2021]

**In Brief | The IMF has launched a new Climate Change Indicators Dashboard which it describes as 'an international statistical initiative' in the form of a single platform intended to enable comparison of the progress of different countries against key climate change indicators**

[Source: IMF media release 07/04/2021]

**In Brief | S&P Dow Jones has announced that it will remove Adani Ports and Special Economic Zone from its Sustainability Index in response to concerns raised by human rights and environmental groups**

[Note: The concerns raised by Market Forces and other environmental/human rights groups are outlined in a letter which can be accessed [here](#).]

[Source: <https://www.marketforces.org.au/adani-ports-removed-from-dow-jones-sustainability-index/>]

**In Brief | Coca-Cola Amatil has announced that it has joined the global RE100 renewable energy initiative and committed to power its entire operations with 100% renewable electricity by 2030 (and by 2025 in Australia and New Zealand)**

[Source: Coca-Cola Amatil media release 13/04/2021]

**In Brief | Changes triggered by the warming climate pose a security threat to Australia: New report cautions that Australia is 'on the cusp of an overlooked, unprecedented and rapidly advancing regional crisis' occasioned by the physical impacts of the warming climate. The report makes several policy recommendations directed at scaling up the nation's capability across various agencies to enable them to better recognise and respond to the emerging regional climate impacts**

[Sources: Full text report from the Australian Strategic Policy Institute: The rapidly emerging crisis on our doorstep; The Conversation 13/04/2021]

In Brief | A 'gas-supported transition to a net-zero emissions electricity system'? Grattan report argues that Australia can achieve a net-zero carbon emissions electricity system without threatening affordability or reliability of supply (and entirely without coal) but cautions against rushing into 100% renewable energy on the basis that doing so would be costly (especially during the winter months)

[Sources: Grattan institute media release 11/04/2021; Grattan Institute Report: Go for Net Zero]

## Other News

### Time for a 'pink' budget? Chief Executive Women's pre-budget submission makes five recommendations to support Australia's COVID-19 recovery

Advocacy Group Chief Executive Women has released its pre-budget submission which makes five recommendations to support Australia's COVID-19 recovery by building back better – through enhancing participation and productivity and closing Australia's gender gaps.

'As we rebuild from COVID-19 we have an opportunity to 'build back better', accelerate progress on gender equality and build a more inclusive, resilient and stronger nation, economy and community'.

#### Five Recommendations

- **Investment in job creation for women and in female dominated industries:** The submission calls for investment in critical, female dominated industries that have been hardest impacted by the COVID-19 pandemic – for example investment in the nursing, health care, disability and aged care, teaching and early childhood education and childcare sectors.
- **Provision of accessible early childhood education and childcare:** The submission calls on the government to remove existing financial disincentives in the Child Care Subsidy for secondary workers (who are primarily women) to take on paid work. For example, the submission calls for the subsidy to be increased to 95% for low income households and for the recalibration of the taper rate.
- **Tackling the retirement gender gap:** The submission recommends that JobKeeper be continued and expanded in FY21 in female dominated industries still impacted by the pandemic. For example, in the health, education, early child care education and childcare, aged and disability care, retail, administration, tourism and hospitality sectors. The submission further recommends increasing the JobSeeker payment – it's suggested that the government establish an 'income floor' which should be set at 50% of median income – and that the superannuation guarantee be extended to the Commonwealth Paid Parental Leave scheme.
- **Investing in women's safety:** The submission recommends that the government increase funding to deliver the fourth Action Plan of the National Plan to Reduce Violence against Women and their Children and to develop a second National Plan for the elimination of violence against women.
- **Embedding a 'gender lens' in the budget/policy decision making:** The submission calls on the government to: a) integrate gender impact assessments into budgetary decision making processes; and b) to require gender distribution analysis of all budget measures by the Parliamentary Budget Office to help ensure the gendered impacts of recommendations are considered.

[Source: CEW pre-budget submission 2021/22]



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