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

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Remuneration

The gender pay gap is getting worse in Australia: WGEA estimates it will take 26 years to reach gender pay parity

- Based on analysis of the latest average weekly earnings data from the Australian Bureau of Statistics (ABS), the Workplace Gender Equality Agency (WGEA) has determined that the national gender pay gap – the difference between the average weekly full-time base salary earnings of women and men, expressed as a percentage of men's earnings – has increased over the last six months from 13.4% to 14.2%.

- This means that on average, women working full time earned $261.50 less a week than their male counterparts.
- Equal Pay Day this year will fall on 31 August 2021. This date marks the 61 extra days women need to work on average, to earn the same annual pay as men.
- On current trends, the WGEA predicts that it will take 26 years to reach gender pay parity.

What's behind the increase in the gender wage gap?

The WGEA attributes the growing gap primarily to the higher growth in men's full time wages over the period (eg in the construction industry) - men's full time wages increased 1.8% - relative to the growth in women's full time wages. Women's full time wages increased only 0.9% over the period.

Call for employers and employees to sharpen their focus on the issue

The WGEA has urged employers to undertake regular pay gap audits and act on the findings.

The WGEA has also called on employees to be proactive in focusing attention on the issue, suggesting that they start by visiting the WGEA website to ascertain whether their employer has completed a pay gap audit and/or acted on the findings and use this information to inform their conversations with employers and fellow employees.

WGEA Director Mary Wooldridge said

> 'This Equal Pay Day, we're calling on all Australians to ask #WhatsYourPayGap? in their workplaces and industries as a crucial step towards bridging this divide. Equal Pay Day is an ideal opportunity to remind employers around the country that one of the key levers of change is through gender pay audits. These audits help employers identify and address discriminatory pay, to ensure that women are equally compensated and valued'.
>
> [Source: WGEA media release 19/08/2021]

US CEO pay and shareholder opposition to 'say on pay' proposals is at record highs according to ISS analysis

ISS has released a summary of the key findings from its recent executive compensation 2021 proxy review.

Some interesting findings

- Shareholder support for 'say on pay' proposals:
  - The proportion of 'say on pay' proposals that failed to be carried jumped to 2.6% in 2021 (up from 2.1% in 2020). For context, ISS points out that this is the highest failure rate since 2012 (when say on pay votes were made mandatory).
  - Otherwise, the level of shareholder support, though still high (above 95% on average), continued to trend downwards.
  - ISS suggests that the dip in the level of support may be due to the impact of COVID-19, observing that where companies elected to make-progress long term incentive plans in light of the pandemic, they often faced opposition from shareholders.
- Median CEO pay remained is at record highs in the S&P 500 and Russell 3000 indices (despite the COVID-19 related worker pay freezes and reductions). ISS attributes the increases primarily the award of larger long-term equity incentives.
- According to ISS, the use of discretionary CEO bonuses increased in both S&P 500 and non-S&P Russell 3000, while use of formal performance-based bonus programs decreased across both indices. ISS attributes the uptick in the use of discretionary bonuses to the uncertainty caused by the pandemic and the associated difficulty in setting performance goals.
- Increased transparency:
  - ISS considers that 75% of companies are now providing increased disclosure around fees paid to non-executive directors (up from only around 66% last year).
  - ISS comments that 'COVID-19 related issues dominated disclosures and pay decisions' this year, with many companies that elected to adjust in-progress long term incentive plans (LTIPs) facing investor opposition.

  [Source: ISS media release 18/08/2021]

In Brief | Undermining diversity? A University of South Australia study has found that 80% of ASX 500 firms pay female executives 30-35% less than their male counterparts despite the female executives in question being equally well qualified. The study also found that failure to pay women equally for their work has negative implications in terms of reaping the benefits (financial and otherwise) of increased diversity

[Sources: University of South Australia media release 18/08/2021; [registration required] Full text study: Who pays the penalty? Implications of gender pay disparities within top management teams for firm performance, Human Resource Management, Volume 60, Issue 4 July/August 2021 Pages 681-699]

In Brief | The Australian Public Service Commission has released principles governing the use of performance bonuses in Commonwealth entities and companies. The principles make clear that bonuses should 'only be used in limited circumstances' and be 'carefully designed to clearly align with delivering a public benefit over and above expected outcomes'

[Source: Australian Public Service Commission Principles governance performance bonus use in Commonwealth entities and Companies 13/08/2021]

Shareholder Activism

Shareholder climate resolutions filed at Origin

The Australasian Centre for Corporate Responsibility (ACCR) has filed two shareholder resolutions at Origin ahead of the AGM which is due to take place on 20 October 2021. The full text of the resolutions and supporting statement is here.

Both ordinary resolutions are contingent on the passage of a special resolution (which has been filed separately by a second group of shareholders) seeking to amend the company's constitution to enable shareholders to bring advisory resolutions.

Details: Climate related lobbying Resolution

The resolution calls on Origin to strengthen its review of industry association membership to ensure that the process identifies any areas of inconsistency between the lobbying/advocacy efforts of the associations to which it belongs, and the goals of the Paris Agreement, and that where inconsistencies are identified, the company suspends its membership for 'a period deemed suitable by the board'.

The ACCR's supporting statement raises concerns about Origin's continued membership of certain associations (eg the International Energy Agency among others) in light of their climate stance and questions the effectiveness of Origin's current approach to reviewing Association membership.

Commenting on the resolution, ACCR Director of Climate and Environment Dan Gocher said:

> 'The advocacy by Origin's industry associations throughout the COVID-19 pandemic has been fundamentally at odds with the Paris Agreement's goals: demands for government support and subsidies, fast-tracked approvals for new gas developments, and an aggressive deregulation agenda. The Australian Petroleum Production and Exploration Association (APPEA) claims credit for the Government's 'gas-fired recovery' and Origin is a direct beneficiary of these lobbying efforts. The greenwashing has to be called out - it is unacceptable that both organisations claim to support the Paris Agreement whilst seeking to open up new gas basins'.

Paris-aligned capital expenditure Resolution

The second resolution calls on Origin to 'align all material future capital expenditure with the Paris Agreement's objective of limiting global warming to 1.5°C'.

The ACCR's supporting statement raises concerns about the company's continued investment in sustaining fossil fuel generation and its relatively low spend on decarbonisation projects. The ACCR argues that the company's lack of investment in energy transition has negatively impacted the company's bottom line, stating that Origin 'has failed to effectively manage the energy transition, resulting in its share price substantially underperforming the benchmark S&P/ASX200 index over the past decade, and declining by more than 67% since its peak in mid-2014'.

Commenting on the resolution, Mr Gocher said,

> 'Capital allocation provides direct insight to how a company is prioritising decarbonisation and Origin is investing millions in oil and gas exploration and appraisal in the Beetaloo Basin. Twiggy Forrest has seen the light and is exiting fracking on climate grounds, when will Origin? Origin has gained significant mileage out of its questionable science-based target for 2032, which accommodates emissions growth and doesn't capture gas exports. It is time for genuine action if it is genuinely committed to a pathway consistent with 1.5°C'.

Other shareholder resolutions

A second shareholder group has filed three ordinary ESG resolutions at Origin. The full text of these resolutions is here.

> [Note: Resolution 5 (special resolution to amend the company's constitution to enable shareholders to bring advisory resolutions) has since been withdrawn by shareholders because it is duplicates a second, similar resolution that will be put to the meeting]

Details

- **Ordinary resolution on water (fracking):** The resolution calls on the company to commit to establishing a 'baseline of water quality' across the whole of the company's licence area, to consult with traditional owners and their family

groups on all cultural water flows, and to make the 'methodology, findings, and recommendations of this research public' before undertaking any further shale oil and gas exploration and/or production (fracking).

- **Ordinary resolution on cultural heritage:** The resolution calls on the company to: 'support and comply with all legislative changes' resulting from the review of heritage protection laws and policies being undertaken in the wake of the destruction at Jukkan Gorge and to pause all operations in the company's licence areas until all of the recommendations of The Scientific Inquiry into Hydraulic Fracturing in the Northern Territory's Final Report (2018) have been implemented.
- **Ordinary resolution on consent:** The resolution calls on the company to: a) acknowledge that Traditional Owners have a right to know who has consented to the company's operations on their country; b) obtain consent from Traditional Owners in accordance with the standards set out under the principles of the United Nations Free, Prior and Informed Consent; and c) publicly disclose any and all materials (maps, translators, etc.) used in consent negotiations and details of enquiries made by Traditional Owners about the consent agreements that pertain to their country.

[Sources: ACCR media release 18/08/2021; Origin media release 17/08/2021;

Shareholder climate lobbying resolution filed at South32

The Australasian Centre for Corporate Responsibility (ACCR) has filed an ordinary shareholder resolution at South32 Ltd on industry association memberships and climate related lobbying. The resolution is contingent on the passage of a separate special resolution to amend the constitution.

The full text of the lobbying resolution together with the ACCR's supporting statement is here.

The company has issued a brief statement confirming that the resolutions and supporting statements, together with the board's voting recommendations will be included in the Notice of Annual General Meeting. This will be published in September.

Details: Ordinary resolution on climate-related lobbying

The resolution is identical to the resolutions filed separately by the ACCR at Origin (covered separately above) and BHP.

The resolution calls on the company to strengthen its review of industry association membership to ensure that the process identifies any areas of inconsistency between the lobbying/advocacy efforts of the associations to which it belongs, and the goals of the Paris Agreement, and that where inconsistencies are identified, the company suspends its membership for 'a period deemed suitable by the board'.

The ACCR's supporting statement raises concerns about the company's current approach to reviewing industry association membership, noting in particular the company's continued membership of 'at least two industry associations, with climate lobbying practices that are misaligned with the Paris Agreement' as cause for concern.

The ACCR states:

> 'Despite our company's commitment to the Paris Agreement, its industry associations continue to advocate for new and expanded coal and gas extraction, to prolong the use of coal-fired power in electricity generation and do not support more ambitious 2030 targets or net zero by 2050'.

The ACCR observes that the company has not previously faced a resolution of this kind (unlike BHP, Origin and Rio Tinto) and has had 'several years to affect change within its industry associations'. The ACCR argues that the companies 'can and must do more to ensure that its industry associations advocate consistently with the Paris Agreement'.

[Source: ACCR media release 23/08/2021]

Institutional Investors and Stewardship

Beyond net-zero: IGCC report finds investors are increasingly embracing interim targets

The Investor Group on Climate Change (IGCC) has released its latest annual report tracking institutional investors' current and future appetite for climate change-aligned investments as well as trends in investor attitudes/approaches to a range of climate-risk related issues. The report is based on a survey of 50 asset owners and managers active in Australia and New Zealand and on additional qualitative information provided by participants.

Some Key Takeaways

- **Beyond net-zero – investors are increasingly focused on interim targets to demonstrate Paris alignment**
  - According to the report, over 40% of survey respondents have already made portfolio-wide net zero by 2050 commitments (up from 27% in 2020).
  - Investors are also increasingly setting interim emissions reduction targets. According to the report, 30% of investors have set interim reduction targets at a portfolio level, with a further 30% actively considering doing so.
  - The report suggests that 'with net zero now a baseline for action, interim targets are becoming a key feature of Paris-aligned portfolios, with clear signals that investors are embracing the numerous tools and frameworks to reach such targets'.
- **The majority (55%) of investors are now reporting against the TCFD recommendations (up from 38% last year).** While welcoming this increase, the IGCC considers that the 'total number of TCFD disclosures is still too low and the need to push investors to disclose is critical'. The report further suggests that the introduction of new APRA climate change guidance may accelerate adoption.
- **Use of new international climate frameworks**: The report found that there has been a change in the way in which investors are approaching the task of aligning their portfolios with the goal of the Paris Agreement/implementing net zero emissions commitments across their portfolios. According to the report, the last 12 months has seen an uptick in the adoption (by investors) of new international climate frameworks. The report found that 40% of investors are using the Paris Aligned Investment Initiative and 10% are using either the UN-convened Asset Owners Alliance Target Setting Protocol or the Net Zero Asset Managers Initiative.
- **The report identifies climate policy uncertainty (together with lack of appropriate investment opportunities) as the key barriers to green investment.** According to the report 70% of investors indicated consider policy uncertainty to be the key barrier to investment (up from only 30% in the last survey). Almost 60% of survey respondents nominated lack of appropriate investment opportunities as a key barrier to investment.

[Source: Full text report Aspiration to Action]

Disclosure and Reporting

Top Story | Changes to continuous disclosure laws are now permanent: Is this the end of speculative class actions?

MinterEllison has published an article providing a detailed explanation of significant changes to continuous disclosure obligations introduced by the Treasury Laws Amendment (2021 Measures No. 1) Act 2021 and discussing the implications of those changes.

You can access the full text here.

New report finds ASX 200 companies have embraced TCFD-aligned reporting and scenario analysis and are increasingly disclosing net zero commitments

Key Takeouts

- ACSI's analysis of trends in climate risk disclosure across the ASX 200 has identified a significant spike in the number of companies that have committed to net zero
- The report also found there has been a 90% increase between 2019 and 2020 reporting in the number of companies disclosing scenario based analysis
- ACSI also predicts, based on current trends, that the majority of ASX 200 companies will be reporting in alignment with the TCFD reporting framework by next year.
- The report highlights that investors would generally like to see more detailed disclosure in various areas including in the context of how net-zero interim targets will be met, how they align with the goals of the Paris Agreement and how they align with/inform broader company strategy

The Australian Council of Superannuation Investors (ACSI) has released a report tracking trends in climate risk disclosure across the ASX 200. The findings are based on analysis of publicly available documents – annual reports, sustainability reports, TCFD reporting, ASX announcements and information available on company websites - released by ASX 200 companies up to 31 March 2021 (2020 reporting) as well as on information gained through ASCI's engagements.

Key Takeaways

Uptick in the number of ASX 200 companies who have committed to net zero

- The report found that the number of ASX 200 companies who have set a net zero target for 2050 or sooner has spiked to 49 companies, including large resources companies (up from just 14 in FY19). This means that ASX200 companies with a collective market capitalisation of over $1 trillion dollars (50%) are now covered by net zero commitments
- ACSI found that the banking, energy and utilities, transport and real estate sectors are leading the way on setting net zero targets. In contrast, rates of adoption of net-zero commitments were lowest in the financials (excluding banks), healthcare and consumer services, retail, and software services/media sectors.
- ACSI puts the surge in net-zero commitments down primarily to ASX 200 companies' response 'to global and market signals that the global economy is moving to one that is low carbon'.
- ACSI points out that outside of the ASX 200, there has also been an uptick in net-zero commitments including among industry groups (eg the Business Council of Australia (BCA), Australian Petroleum Production & Exploration Association (APPEA) and the Minerals Council of Australia (MCA)) and institutional investors/super funds.

Almost half of all ASX 200 companies have set some form of emissions reduction target

- According to ACSI, 94 ASX 200 companies have disclosed emissions reductions targets (up from 74 in FY19) and a further nine companies have disclosed their intention to do so.

- Sixty-six companies have set short term targets (to 2025), 54 have set medium-term targets (2026-2039) and 37 have set long-term targets (2040+).
- However, the report highlights that there are a number of companies in higher risk sectors that are yet to set any targets. For example, ACSI found that in the Materials sector only 65% of companies have set some form of target, likewise in the Energy and Utilities and Transport sectors, only 64% and 71% of companies respectively have done so.

Room to improve…

The report makes clear that though there has been progress in terms of the number of companies disclosing emissions reduction targets, there is significant room for improvement. For example:

- ACSI found that only 19 of the 49 companies that have set net zero targets have 'fully mapped their pathway to net zero'.
- Of the companies that have set long term (2040 or later) net zero targets, only 13 had also set both short and medium-term targets.
- ACSI further comments that from an investor standpoint, it is not necessarily clear how interim targets align with the goals of the Paris Agreement.
- In most cases, the targets set do not include Scope 3 emissions – only 15 companies have set targets and actions to reduce Scope 3 emissions. ACSI found that within this group there is wide variation in the approaches/options being considered/adopted.

TCFD reporting likely to be 'mainstream' by next year

- The report predicts, based on current trends, that the majority of ASX 200 companies will be reporting in alignment with the TCFD reporting framework by next year.
- At this stage:
  - 80 ASX 200 companies have adopted the TCFD reporting framework (up from only 11 companies in FY17).
  - A further 18 companies have committed to disclose against the framework and a further 17 are reviewing the use of the framework.
  - According to ACSI, most of the companies not using the TCFD framework are operating in sectors with limited direct and indirect exposure to climate-change risks (eg 100% of companies in the retail sector are not using the TCFD reporting framework). In contrast, rates of adoption of the framework stand at over 80% for companies in the energy and utilities sector and banking sector.
  - ACSI comments that currently most TCFD-aligned reporting is presented in a standalone report. The report suggests that looking forward, investors would like to see companies integrate climate related reporting into existing financial statements/disclosures.

90% increase between 2019 and 2020 reporting in the number of companies disclosing scenario based analysis

- ACSI found that 62 companies undertook scenario analysis, a significant increase on the 18 companies that did so in 2018 and 32 that did so in 2019. The report comments that the rapid rate of adoption/use of scenario analysis suggests that 'it is becoming a part of the normal cycle of forecasting and analysis that companies undertake as a part of risk management and mitigation'.
- ACSI highlights that though most companies used modelling that results in less than two degrees of warming, only 23 companies used a 1.5 degree scenario (up from 13 in FY19). The report suggests that the IEA's report – Net Zero by 2050 A Roadmap for the Global Energy Sector' may serve to increase the number of ASX 200 companies using a 1.5 degree scenario.

Room to improve…

Though the report welcomes the increased use of scenario analysis, it also highlights several areas where reporting could be improved. For example:

- The report highlights that comparability of scenario analysis remains a challenge for investors, especially in light of the fact that there are now over 70 different scenarios being reported against. ACSI comments that 'the vast array of scenarios being used, makes it difficult for investors to understand how peer companies in a sector might perform relative to others in low-carbon scenarios'.

- The degree of detail provided (generally) remains limited. For example, ACSI found that:
  - it is not always clear what inputs/assumptions have been used or excluded
  - though companies are increasingly disclosing how scenario analysis informs business strategy, they tend (with some exceptions) to focus on shorter-term business planning cycles, rather than focusing on longer-term strategy
  - few companies explain how scenario analysis informs corporate decisions and capital investment frameworks for assessing growth opportunities and acquisitions
  - overall companies continue to 'favour qualitative disclosures that provide little insight for investors' because the specific potential impacts (positive or negative) are not quantified/explained in detail. The report comments that from an investor perspective 'a mix of quantitative and qualitative disclosure and discussion of outcomes would give greater insight into the risks and opportunities at an enterprise and asset level'.
- Looking ahead, the report suggests that investors would like to see companies provide more detail around the link between scenario analysis and corporate strategy. For example investors would like to see:
  - A mapped pathway for meeting net zero commitments (including details of the short and medium term actions and investments required to achieve the net zero target) included in company strategy. ACSI suggests that this will 'ensure' that companies are 'continually positioned to meet the goals of the Paris Agreement',
  - Integration of Paris-aligned metrics into investment decision making and capital allocation frameworks. On this point, the report welcomes moves by a 'handful of companies' to include the dollar figure of investment in low carbon opportunities/projects as part of their capital allocation frameworks.

Linking climate change targets to executive remuneration is identified as an emerging trend

- The report found that 13 resources companies have already integrated specific climate change hurdles into executive remuneration, or plan to do so in FY 21 reporting.

[Source: ACSI media release 22/08/2021; ACSI full text report: Promises, pathways & performance Climate change disclosure in the ASX200]

New report tracks emerging trends in SDG reporting by ASX 150 companies

Key Takeouts

- Overall the report found that Sustainable Development Goal (SDG) disclosure by ASX 150 companies has improved over the past three years in a number of respects
- The report also identifies a number of areas where disclosure could be improved. These areas include providing more granular information around how business performance targets are linked with prioritised SDGs and 'imminent sustainable development issues such as climate action, carbon neutrality, modern slavery risk management and Covid19 impacts'.
- The report also highlights that the design and content of SDG reporting varies considerably from company to company which makes comparison of performance across companies difficult. The report comments that 'the call for standards on SDG reporting still remains, loud and strong, as more and more companies continue to grapple with meeting the needs of stakeholder information needs'.

RMIT University and CPA Australia have released the third in a series of reports into emerging trends in Sustainable Development Goals (SDG) disclosure practices by ASX 150 companies over the 2018-2020 period.

Key Takeaways

Overall improvement

Overall, the report found that SDG disclosure by ASX 150 companies has improved over the 2018-2020 period in a number of respects. For example:

- The report found that the number of reports mentioning the SDGs increased from 37% of companies in 2018 to 62% in 2020. According to the report, the majority of companies mentioning the SDGs are in the materials, industrials and financial sectors.
- The report also found that the number of companies reporting on SDG prioritisation (identifying the SDGs relevant to their own business/goals on which the business will focus) increased significantly from 25% of companies in 2018 to 59% in 2020. The report suggests that this signals that companies are 'beginning to better understand

the connections between the SDGs and their business models, flagging improvements or a maturing of knowledge and expertise in SDG reporting'.

Top performing companies

- Page 21 of the report lists the 'top 20' performing ASX 150 companies from an SDG reporting and measurement standpoint, for 2018, 2019 and 2020.
- The report identifies the three top performing companies for 2020 as: 1) ANZ Banking Group Limited; 2) APA Group FP Units Stapled Securities; and 3) Brambles Limited

Governance and support

The report also found evidence of increased focus on governance structures and mechanisms to oversee the SDGs in disclosures. For example:

- The number of companies disclosing that their board includes a board member/members with sustainability experience has nearly quadrupled from 13 in 2018 to 50 companies in 2020
- Likewise, the number of companies disclosing that a board member/members have sustainability oversight responsibility has also more than doubled from 47 companies in 2018 to 100 in 2020.
- The number of companies that disclose that they have sustainability oversight committee has also significantly increased from 61 companies in 2018 to 111 in 2020

Climate action tops the list of most commonly prioritised SDGs

- The top five SDGs most commonly prioritised 2020 were: 1) SDG13 Climate Action; 2) SDG8 Decent work and economic growth; 3) SDG5 Gender Equality; 4) SDG12 Responsible Consumption and Production, and 5) SDG3 Good health and well-being.
- The report highlights that the number of companies reporting SDG 3 Good health and well-being spiked in 2020 with almost three times more companies reporting SDG3 in 2020 compared to 2018. The report attributes this increase primarily to the onset of the Covid19 pandemic which brought increased focus/pressure on companies to respond to the well-being of employees and other stakeholders.

A disconnect between net zero commitments and commitment to SDG 13 Climate Action

The report highlights an apparent disconnect or 'gap' between companies stated commitments around carbon neutrality and their prioritisation of SDG 13 Climate Action.

For example, the report found that:

- 38 companies have said that they intend to achieve net zero by 2050 or earlier. However, 29% of have not disclosed prioritising SDG 13 Climate Action.
- The report found that 11% of ASX 150 companies report having achieved carbon neutrality (though only 76% of this group prioritise SDG 13 Climate Action).

Measuring performance against prioritised SDGs – more granular data is needed

The report found that disclosure around how companies are performing against prioritised SDGs has improved in a number of respects over time. For example:

- The number of companies disclosing how their prioritised SDGs are linked to business performance targets or indicators has significantly increased significantly over the period 2018 to 2020. In 2018 only 9 companies disclosed this information. In 2020, 65 companies did so.
- However, only 14 companies disclosed more granular data ie disclosed how their prioritised SDGs are linked to business performance targets or indicators at the SDG target level. For context, this represents about 16% of the 88 companies that are reporting prioritised SDGs. The report identifies this as an area where disclosure could be improved. It's also suggested that further research into the reasons/challenges around why companies are not reporting at a more granular level is needed.

More broadly, the report highlights the lack of comparable information on SDG performance as an ongoing challenge and expresses support for the introduction of SDG reporting standards.

[Source: RMIT media release 13/08/2021; Full text report: SDG measurement and disclosure 3.0: A study of ASX 150 companies]

Switzerland has outlined parameters for the planned introduction of mandatory TCFD-aligned reporting requirements

The Swiss Federal Council has outlined parameters for the planned introduction of mandatory climate-risk reporting by large Swiss companies.

The Federal Council has directed the Federal Department of Finance to prepare a consultation draft with the following parameters by 'summer 2022'.

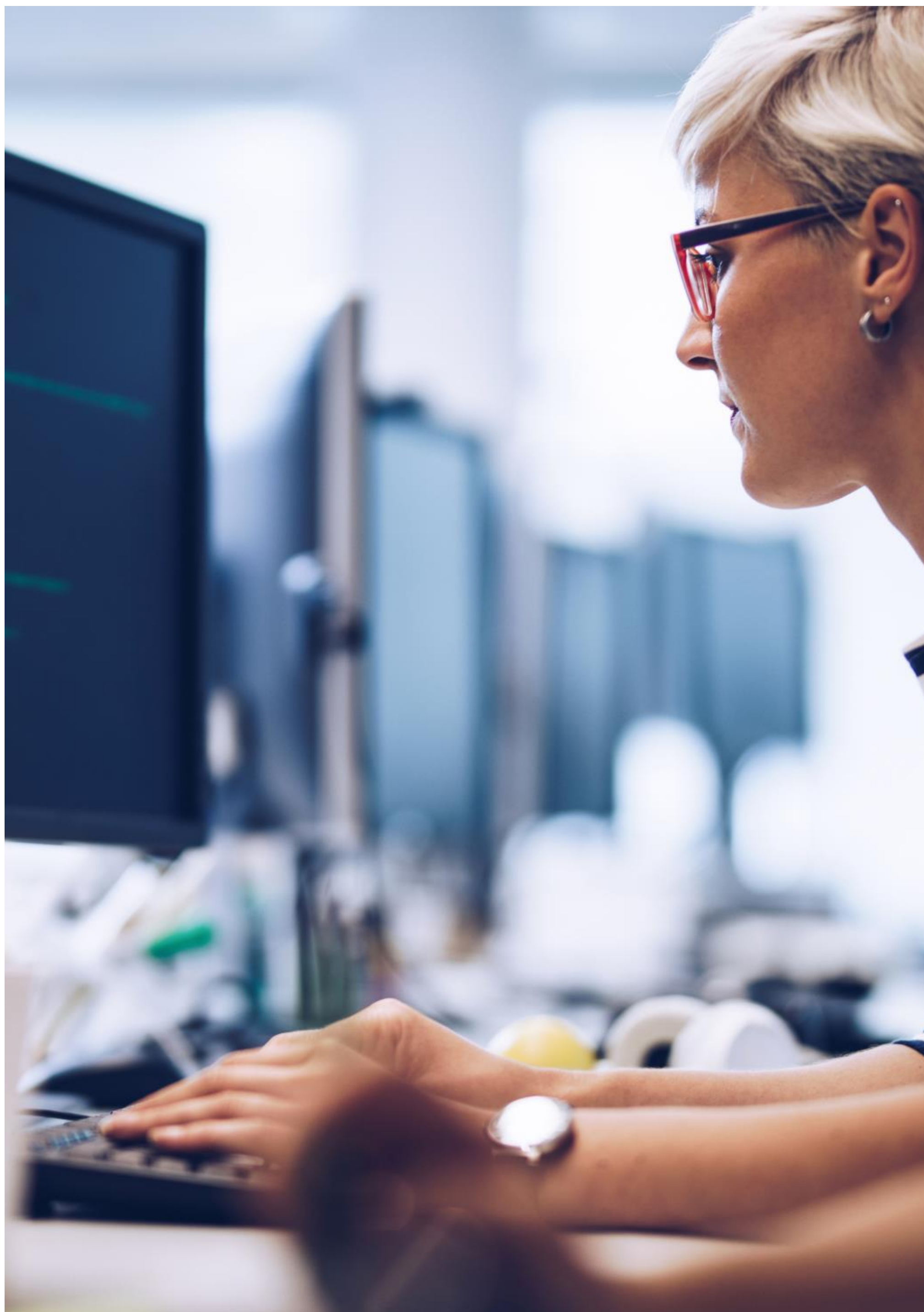
- Application: It's envisaged that the new requirements will apply to large public companies banks and insurance companies with 500 or more employees, more than CHF 20 million in total assets or more than CHF 40 million in turnover.
- Timing: Mandatory TCFD-aligned reporting is expected to commence from 2024 for the 2023 financial year.
- Scope of reporting: Public reporting will include the financial risk that a company incurs as a result of climate-related activities and the impact of the company's business activities on the climate/environment. Minimum requirements will also 'ensure that disclosures are meaningful, comparable and, where possible, forward-looking and scenario-based'.

According to the Federal Council's statement, these parameters have been welcomed by the majority of business associations and environmental/consumer protection associations.

[Source: Federal Council media release 18/08/2021]

Meetings and Proxy Advisers

Electronic meetings: ASIC's no-action position (mostly) no longer in effect



- In light of the ongoing uncertainty around COVID-19 restrictions, and following the expiry of relief under Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 (the Determination) on 21 March 2021, the Australian Securities and Investments Commission (ASIC) adopted a temporary 'no-action' position on non-compliance with requirements around holding/convening electronic meetings (summarised here).
- Following the passage of Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 (summary here), which temporarily enables companies to use technology to meet regulatory requirements under the Corporations Act 2001 (Cth) around convening meetings, distributing meeting related materials and executing documents until 31 March 2022, ASIC has withdrawn its guidelines on holding virtual meetings and confirmed that its no-action position is no longer in effect (with one key exception).
- ASIC's no-action position in relation to the holding of AGMs within two months of their due date remains in effect.

[Source: ASIC guidelines for investor meetings and using virtual technology 18/08/2021]

Financial Services

Top Story | Reforms and penalties on the way for unfair contract terms

On 23 August 2021, Treasury released a draft Bill to amend the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) and the Australian Consumer Law under Schedule 2 of the Competition and Consumer Act 2010 (Cth) (ACL) with the aim of strengthening and expanding the unfair contract terms (UCT) regime.

You can find an expert summary of the proposed changes and the implications here.

Top Story | MinterEllison's submission on the foreign financial services regime

MinterEllison has lodged a submission with Treasury in response to the Consultation Paper on Relief to Foreign Financial Service Providers (FFSPs) released in July 2021. You can find our summary of the reform options under consideration here.

Key Takeaways from our submission

Key points from our submission (full text here) are:

- We support the proposal to provide relief to FFSPs in a form similar to that which was in place before 31 March 2020 in order to reduce duplication of regulation and barriers for FFSPs entering the Australian market.
- We believe there is considerable opportunity to improve the previous regime, such as
  - expand the jurisdictions for which sufficient equivalence exemptions are available to include at a minimum those listed and consideration given to a broader list of regulators;
  - expand the financial services and products.
- We strongly support the continuation of the limited connection relief and do not believe the funds management relief is a suitable alternative.
- We have identified some alternate approaches in our submission including:
  - an expansion of exemptions available for FFSPs who wish to provide financial services from offshore to professional investors only;
  - providing a safe harbour based on the number of Australian clients and/or visits to Australia.
- We also support the fast-tracking options discussed in the Consultation Paper but believe that the obligations of FFSP licences should be limited, having regard to their overseas regulated status.

Consultation launched on draft Bill proposing to extend and strengthen UCT protections

Following earlier consultation on proposed changes to unfair contracts protections, Treasury is consulting on a draft Bill - Treasury Laws Amendment (Measures for a later sitting) Bill 2021: Unfair contract terms reform – that if legislated in its current form, would introduce amendments to the Australian Consumer Law and the Australian Securities and Investments Commission Act 2001 that are intended to strengthen existing unfair contracts protections for consumers and small businesses.

The due date for submissions to the consultation is 20 September 2021.

Overview of key changes

Expanding the scope of contracts covered

If legislated in its current form the Bill would expand the class of contracts that are covered by the unfair contract provisions by:

- increasing the small business definition thresholds (so that the regime captures an expanded class of small business standard form contracts); and
- removing the contract value threshold (so that the regime captures an expanded class of small business standard form contracts).

Clarifying the application of existing unfair contract protections

If legislated, the Bill would introduce changes that are intended to both clarify and strengthen existing unfair contract term provisions in a number of ways. Proposed changes include:

- introducing new provisions setting out how a court should determine whether a contract is a standard form contract including:
  - ensuring that a court must take into account repeat usage of a contract when determining whether it is a standard form contract;
  - setting out matters that the court must not consider when determining whether a party was required to accept or reject terms of a contract or whether a party was given an effective opportunity to negotiate the contract
- making technical amendments to clarify that remedies for non-party consumers are also applicable to non-party small businesses
- exempting certain clauses from the unfair contract terms provisions where those clauses are included in standard form contracts in compliance with relevant Commonwealth, State or Territory legislation.

Proposed stronger remedies

The Bill proposes to strengthen the remedies and enforcement of the unfair contracts regime in a number of respects. The draft explanatory memorandum summarises these as follows:

- 'providing courts with the power to impose a pecuniary penalty for a contravention of the prohibition on proposing, applying or relying on an unfair contract term provision in a standard form contract, in addition to the current ability to declare it 'unfair'
- streamlining the powers of a court to make orders to void, vary or refuse to enforce part or all of a contract (or collateral arrangement)
- making clear a court's power to make orders that apply to any existing consumer or small business standard form contract (whether or not that contract is put before the court) that contains an unfair contract term that is the same or substantially similar to a term the court has declared to be an unfair contract term
- making clear a court's power to issue injunctions against a respondent with respect to existing or future consumer or small business standard form contracts entered into by a respondent, containing a term that is the same or is substantially the same as a term the court has declared to be an unfair contract term
- creating a new rebuttable presumption that terms that have been found to be unfair that are subsequently included in relevant contracts in similar circumstances, are unfair'.

The previous consultation considered removing 'automatic voiding provisions' ie provisions that mean that if a court finds a term in a standard form consumer or small business contract to be unfair, that term is considered void without the need for further action or orders to be made. This has not been included in the draft Bill.

Proposed commencement date

If legislated in its current form, the changes in the Bill would commence day after the end of the period of 6 month beginning on the day the legislation receives Assent.

[Sources: Treasury Consultation: Strengthening protections against unfair contract terms 23/08/2021-20/09/2021; Assistant Treasurer Michael Sukkar media release 23/08/2021]

Hayne implementation: FSC launches a second round of consultation on a revised draft Life Insurance Code of Practice

- The Financial Services Council (FSC) has released a revised draft Life Insurance Code of Practice 2.0 (draft Code) for a second round of consultation.
- The revised draft Code has been rewritten in plain English to improve clarity and the navigability and also incorporates feedback from the first round of consultation as well as recommendations from the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the life insurance industry, ASIC reviews, Productivity Commission reports, the Hayne Commission and feedback from consumer advocates.
- Following consultation, the FSC intends to submit the Code to the Australian Securities and Investments Commission (ASIC) for approval under the new enforceable code regime. Once finalised, the new Code will replace that existing Code and be binding all life insurance FSC members.

Timeline

- The due date for submissions on the revised draft Code is 29 September 2021.
- There is no proposed commencement date for the new Code.

[Source: FSC media release 18/08/2021]

APRA has released final prudential practice guide APG 220: Credit Risk Management

Context

- In December 2020, the Australian Prudential Regulation Authority (APRA) consulted on proposed changes to APS 220 in anticipation of the passage of legislation - the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020) – which would (if passed in its current form) mean ADIs will no longer be required to comply with the responsible lending obligations in the National Consumer Credit Protection which are currently administered by the Australian Securities and Investments Commission (ASIC). The proposed changes to APS 220 are contingent on the passage of the Bill.
- Proposed changes to APS 220 include:
  - a new requirement (similar to the government's proposed requirements of non-ADI lenders) for ADIs to assess an individual borrower's repayment capacity without substantial hardship
  - aligning the commencement of APS 220 and the commencement of the government's proposed reforms. APRA anticipates that APS 220 will be implemented either on 1 January 2022 or 'earlier if the government's proposed reforms are passed as legislation'.

Prudential Practice Guide APG 220 Credit Risk Management (APG 220) has been finalised

Ahead of the release of the final APS 220, and following earlier consultation, APRA has released final guidance (APG 220) to support ADIs in meeting requirements in APS 220. APRA has also released a letter to ADIs highlighting changes made to APG 220 in response to feedback received through the consultation process and its expectations around credit risk management.

APRA makes clear that it expects that

> 'prudent ADIs would already be meeting the requirements of the new APS 220. In particular, given APRA's focus on reinforcing sound lending practices, and in light of the current risk outlook, APRA would be concerned if ADIs were not already meeting the core requirements for prudent loan origination standards'.

Changes to APG 220

APG 220 is broadly similar to the draft guidance.

APRA flags three changes made in response to feedback received through the consultation process which are designed to provide greater clarity around APRA's expectations with respect to:

- 'the role of the Board in managing credit risk, aligning with the requirements in APS 220'
- 'sound credit assessment and approval processes, including providing examples where some additional flexibility could be considered prudent'
- 'the use of automated valuation methods, including examples for the prudent development of scorecards and use of risk controls'.

Next steps for ADIs

APRA expects ADIs to review the examples of better practice in APG 220 against their existing credit risk management practices and to 'make changes where appropriate'.

[Sources: APRA letter to ADIs 19/08/2021; APG 220 Credit Risk Management (APG 220)]

ASIC has banned a former broker and insurance salesman from financial services and credit for 10 years

- The Australian Securities and Investments Commission (ASIC) has banned former mortgage broker and insurance salesman Richard Pusey from providing financial services and engaging in credit activities, controlling a financial

services or credit business, and performing any function in relation to carrying on a financial services or credit business for a period of 10 years. The ban took effect on 6 August 2021 and has been recorded on ASIC's banned and disqualified persons register.

- **Reasons for ASIC's decision**: ASIC states that it made the decision to ban Mr Pusey because it was satisfied that he:
  - 'provided seven false statements to ASIC in a number of credit licence applications and annual compliance statements between 2011 and 2017;
  - lacks the attributes of good character, honesty, and judgement;
  - has no regard for the law;
  - cannot be relied upon to comply with directions issued from authorities;
  - is likely to contravene credit legislation and financial services legislation; and
  - is not a fit and proper person to participate in the financial services and credit industries'.

[Source: ASIC media release 24/08/2021]

APRA has published further information ahead of the commencement of APRA Connect

- Ahead of the 13 September 2021 APRA Connect 'go live' date, the Australian Prudential Regulation Authority (APRA) has published further information, to support entities in their preparations. This includes information on responsible persons and BEAR information migration.
- APRA has reminded all entities that they need to nominate their initial Regulatory Reporting Administrator.
- To further assist entities, APRA will hold a webinar on 1 September 2021 to provide an overview of available information including a demonstration of APRA Connect.

[Source: APRA media release 19/08/2021]

In Brief | In Brief | ABA Code of Conduct Review: A coalition of 15 consumer groups has recommended 103 changes to the ABA Code of Practice, including substantially increasing the enforceability of the Code; improving the treatment of vulnerable customers/customers experiencing financial hardship; retaining all existing commitments in the Code relating to responsible lending to individuals; and amending the Code's definition of small business

[Source: Consumer Action Law Centre media release 25/08/2021 ; Full text submission: 2021 Review of the Australian Banking Association Code of Practice: Joint submission by consumer organisations August 2021]

Insolvency and Reconstruction

Appointments to Safe Harbour Review Panel announced

- Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017 established a safe harbour for company directors from personal liability for insolvent trading where the company genuinely attempts to restructure.
- The measures are intended to incentivise directors to seek advice on how to restructure and to discourage them from prematurely shuttering financially distressed but viable companies (in order to avoid personal liability).
- Consistent with the government's 2021 Budget commitment to explore further reforms to the insolvency framework, Assistant Treasurer Michael Sukkar has announced that a three person review panel will undertake a three month review of the insolvent trading safe harbour. The purpose of the review is to determine whether the safe harbour is 'a fit for purpose tool to support companies to restructure and survive'.
- The Review will be chaired by Genevieve Sexton. Ms Sexton will be aided by fellow panel members Leanne Chesser and Mr Stephen Parbery.

[Source: Assistant Treasurer Michael Sukkar media release 19/08/2021]

Risk Management

ESG Risk

US Treasury has issued guidance urging multilateral development banks to oppose fossil fuel projects

- In response to President Biden's Executive Order 14008 on Tackling the Climate Crisis At Home and Abroad, the US Department of the Treasury has issued a short guidance document: Fossil Fuel Energy Guidance for Multilateral Development Banks (MDBs) urging MDB staff to support clean energy projects over carbon intensive alternatives, and to only consider funding (directly or indirectly) fossil fuel projects in certain circumstances including where less carbon intensive options are not feasible.
- The US is the largest shareholder in MDBs. Treasury expresses the guidance will assist MDBs in aligning their portfolios with the goals of the Paris Agreement as previously requested by Treasury Secretary Janet Yellen.
- Announcing the release of the guidance, Treasury Secretary Janet Yellen commented:

  'Today, the United States takes bold, proactive steps to address the climate crisis by working with our international partners to establish a clear path to end Multilateral Development Banks' support for fossil fuels except in exceptional circumstances while helping developing countries build a strong and sustainable future'.

Key Takeaways

Broadly, the guidance is intended to 'promote ending international financing of carbon-intensive fossil fuel-based energy while simultaneously advancing sustainable development and a green recovery' by encouraging MDBs to prioritise investment in 'clean' energy projects over carbon intensive alternatives.

POSITION ON CARBON INTENSIVE PROJECTS	GUIDANCE
Opposition to direct investment in coal projects	▪ The guidance explicitly urges MDBs to oppose coal projects. ▪ The guidance suggests that coal decommissioning projects may be considered 'so long as they do not expand the capacity of a plant or extend its life'.
Opposition to direct investment in oil projects	▪ The guidance explicitly urges MDBs to oppose all oil-based energy projects with some limited exceptions. These exceptions include where 'oil-based power generation in crisis circumstances or as backup for off-grid clean energy, if no cleaner options are feasible'.
Qualified support for direct investment in natural gas projects	▪ The guidance explicitly opposes 'upstream natural gas projects'. ▪ The guidance states that 'midstream and downstream' projects will only be supported if the following four criteria are met. – 'The project supports IDA-eligible countries, fragile and conflict-affected states, or small-island developing states; – There is a credible alternatives analysis that demonstrates that there is no economically and technically feasible clean energy alternative; – The project has a significant positive impact on energy security, energy access, or development; and – The project is aligned with and supports the goals of the Paris Agreement as outlined by the joint MDB Paris-alignment methodology, which factors in a country's decarbonization pathway, greenhouse gas reduction strategies, and avoiding carbon lock-in'.
Support for Carbon Capture, Use & Storage (CCUS) and methane abatement projects (including as standalone	▪ The guidance explicitly supports CCUS and methane abatement projects. This includes support for CCUS/methane abatement projects as 'stand alone investments for existing fossil fuel projects assuming they do not expand the capacity of the existing project or a significantly extend its operational life'.

POSITION ON CARBON INTENSIVE PROJECTS	GUIDANCE
investments for fossil fuel or natural gas projects)	▪ Likewise, the guidance explicitly supports 'natural gas and [household] oil heat generation' projects and in particular 'clean cooking projects' where 'no cleaner options are feasible'. ▪ The guidance further states that support for 'natural gas and oil products for industrial or heat generation on a case-by-case basis'.
Indirect investments in coal, oil, natural gas or technology/innovation	▪ The guidance explicitly opposes 'all investments to financial intermediaries or companies where we can reasonably determine that the MDB funds will be used for subprojects or activities that are not consistent with our approach for direct investment projects'. ▪ The guidance further comments that where it is unclear how the funds will be used, 'we will assess the project based on decarbonisation of the client's overall portfolio on a case-by-case basis'.
Policy based operations (that run contrary to the position outlined in the guidance)	▪ The guidance broadly opposes 'operations with policy reforms that directly support fossil fuel activities that are not consistent with our approach for direct investment projects' except in certain circumstances.

[Sources: US Department of Treasury media release 16/08/2021; Guidance: Fossil Fuel Energy Guidance for Multilateral Development Banks]

Falling short: European Central Bank finds two in three European banks' climate/environmental risk plans fail to measure up to expectations

Key Takeouts

- Preliminary analysis by has identified that the majority of banks are falling short of the European Central Bank's (ECB's) expectations with respect to the management and disclosure of climate and environmental risks (C&E risks).
- The ECB has called on banks to urgently accelerate their efforts to align their practices/processes with the ECB's supervisory expectations and has cautioned that 'extreme outliers' should expect a 'qualitative supervisory measure as part of the 2021 Supervisory Review and Evaluation Process'.

Context

- The European Central Bank (ECB) released a guide setting out its 13 supervisory expectations of banks around how they should manage/disclose climate-related and environmental (C&E) risks November 2020.
- Following the release of the guide, the ECB requested that banks conduct a self-assessment against the 13 supervisory expectations and submit their action plans for aligning their existing practices with the ECB's expectations.
- The ECB has now released its preliminary assessment of banks' current practices and action plans.

Key Takeaways

The headline finding is that overall, progress towards aligning current practices with the supervisory expectations in the guide has been limited. For example:

- The ECB considers that only one third of banks have action plans in place that are 'at least broadly adequate' in terms of addressing 'gaps in their strategy, risk management and disclosure arrangements'.
- One in five banks are considered to have '(somewhat) inadequate plans' in place ie plans that are unlikely to meet supervisory expectations/address significant gaps in their current practices.
- Two in three banks have 'failed to sufficiently tailor their [action] plans to the supervisory expectations, with many plans lacking operational details on how their deliverables will actually be produced'.

Looking more closely, the EBC found that the adequacy of banks' action plans varied considerably across the 13 supervisory expectations in the guide. For example:

- The ECB found that the majority of action plans (over 60%) covered 'expectations on the management body, organisational structure and stress testing to a reasonable degree'. Likewise, the ECB found that the majority of action plans also covered the integration of C&E risks across the three lines of defence. Banks also indicated that they 'anticipate making progress with stress testing their capital adequacy' ahead of planned climate risk stress testing in 2022.
- Overall less progress was made on improving operational risk management, liquidity risk management, reporting and disclosures with the ECB concluding that fewer than 2 in 5 banks have developed adequate plans in these areas. In particular, the ECB highlighted that plans often lacked detail around how banks' activities are exposed to C&E related liability/litigation risks.

Planning implementation timelines are considered too slow

The ECB considers that banks' planned implementation timelines for aligning their practices with all 13 supervisory expectations are generally too slow – for example over 20% of banks will not meet any deliverables before the end of 2021 including in the areas of reporting, stress testing, market risk, operational risk and liquidity risk management - and has called on banks to accelerate their efforts.

In saying this, the ECB acknowledges the data gaps/methodological challenges 'may make it difficult to fully implement the supervisory expectations in some cases' (though not in all cases). Where data gaps exist, the ECB urges banks to 'adopt a strategic approach' to implementation, and the ECB sets out a number of examples of better practice around this.

Next steps

Immediate actions

- The ECB plans to publish a report setting out good examples of how banks have developed their practices and plans later this year.
- The ECB will provide all banks with detailed feedback and expects that they will implement prompt actions to address identified shortcomings.
- For 'extreme outliers' the ECB cautions that it intends to 'impose a qualitative supervisory measure as part of the 2021 Supervisory Review and Evaluation Process'.

Looking ahead to 2022

- The ECB will conduct a full supervisory review in 2022 including in-depth analysis of the extent to which banks have incorporated C&E risks into their strategy and risk frameworks.
- The ECB will also conduct climate stress testing in 2022.
- The ECB has also flagged its intention to give 'greater prominence to environmental risks beyond climate-related risks, such as risks of biodiversity loss and pollution'.

[Source: European Central Bank banking division, media release 18/08/2021]

Bluescope announces net zero by 2050 ambition

- BlueScope has announced that it has set a goal of achieving net zero greenhouse gas emissions by 2050 across its global operations. The goal covers Scope 1 and Scope 2 emissions only.
- The company intends to release details of its climate action plan, which will include details of its planned 'decarbonisation pathway' and the capital planning process that will underpin its climate actions in September.
- The company has said that it will allocate up to $150 million over the next five years to fund climate change action including: a new technology plan to 'optimise current operating assets and prepare for emerging and break through technologies'.
- The immediate focus will be on production efficiencies eg increased use of scrap, renewable energy and 'indigenous gases'. The company is seeking government co-funding for a number of pilot projects and plans to develop government and industry partnerships to accelerate progress towards development of 'breakthrough R&D projects'.

- Bluescope makes clear that the achievement of this goal is 'highly dependent' on four key factors: 1) 'the commerciality of emerging and breakthrough technologies'; 2) 'the availability of affordable and reliable renewable energy and hydrogen'; 3) 'availability of quality raw materials' and 4) 'appropriate public policy settings'.

  [Source: Bluescope ASX announcement 16/08/2021]

In Brief | The Customers Amendment (banning goods produced by forced labour) Bill 2021, which seeks to 'absolutely' ban the importation of goods produced in whole or in part by forced labour, has passed the Senate without amendment and progressed to first reading stage in the House

[Source: Customers Amendment (banning goods produced by forced labour) Bill 2021]

Cyber risk

Human error still causing 30% of reported breaches according to OAIC's latest NDB report

Key Takeouts

- OAIC's latest notifiable data breach report for H1 2021 again identifies the health sector as the highest reporting industry sector, followed by the financial sector
- Malicious or criminal attacks is identified in the report as the leading cause of reported breaches followed by human error
- There was a significant jump in the number of reported breaches involving a ransomware in H1 2021 as compared with the previous six month period

The Office of the Australian Information Commissioner (OAIC) has released the latest Notifiable Data Breaches Report for the period January to June 2021.

Key Takeaways

Fewer breaches reported overall

- 446 data breach notifications were received by OAIC over the January to June 2021 period (down 16% on the previous six month period and down 11% decrease compared to January to June 2020)
- The number of notifications varied across the reporting period, ranging from 45 in January – the lowest monthly total since the Notifiable Data Breaches scheme commenced – to 102 in March.

Main sources of reported breaches:

- Malicious or criminal attacks is the leading cause of reported breaches
  - The report identifies malicious or criminal attacks as the leading source of data breaches, accounting for 65% (289) of all notifications.
  - 'Cyber incident' (which covers phishing, ransomware, hacking, brute force attack, malware, or incidents where credentials are compromised/stolen but the method is unknown) was the leading cause of reported breaches within the malicious or criminal attack category.
  - The top sources of cyber incidents during the reporting period were email based phishing (30%), compromised or stolen credentials (method unknown) (27%), and ransomware (24%).
- Spike in the number of reported ransomware incidents: The report found there was a 24% jump in the number of reported ransomware incidents (from 37 in the last reporting period to 46 in H1 2021).:
- Human error is the second leading cause of reported breaches
  - Data breaches resulting from human error accounted for 30% of notifications overall (or 134 notifications) (down 34% from 203 in the previous six month period).
  - Top causes of reported human error breaches were: 1) personal information being emailed to the wrong person (40%) (A further 7% of reported breaches were caused by personal information being sent to the

wrong person by another means); 2) the unintended release or publication of information (23%); and 3) failure to use BCC (8%)
  - Though welcoming this decrease, OAIC Commissioner Angelene Falk urged all entities to remain alert to the risk. Commissioner Falk called on the Australian Government in particular to sharpen its focus on the issue, in light of the fact that 74% of breaches reported by the government fell into this category. s

- System fault: Only 5% of reported breaches were caused by system fault.
- Sectors with the highest reported breaches:
  - The health sector remains the highest reporting industry sector (accounting for 19% of all notifications)
  - The finance sector accounted for 13% of all notifications.
  - OAIC comments that the health and finance sectors have consistently been the highest reporting sectors since the notifiable data breach scheme began.
  - The Legal, accounting and management services sector accounted for 8% of breaches.
- Impact:
  - 91% of data breaches involved contact information, making it the most common type of personal information involved in data breaches.
  - 93% of data breaches affected 5,000 individuals or fewer, with 65% of breaches affecting 100 individuals or fewer. 44% of breaches affected between 1 and 10 individuals.

  [Sources: OAIC media release 23/08/2021; Notifiable data breaches report January to June 2021]

ASX Outage: Independent report into the 2020 ASX outage concludes the upgrade project (that triggered the outage) was not ready to go live

- The Australian Securities and Investments Commission (ASIC) and the Reserve Bank of Australia (RBA) have published a summary of the findings of the independent review into the ASX outage that occurred on 16 November 2020 following an upgrade to the ASX's equity trading platform.
- The purpose of the review was to examine the project and assess 'whether it met internationally recognised standards' and 'relevant securities industry practices'.
- The review concluded that ASX failed to meet 17 of 75 of the capabilities assessed. Shortcomings identified included that the upgrade was:
  - 'not ready to go-live considering ASX's near zero appetite for service disruption'
  - 'gaps in the rigour applied to the project delivery risk and issue management process'; and
  - shortcomings in the project test plan.
- The review makes a number of recommendations to strengthen various aspects of the ASX's approach including recommendations relating to risk, governance, delivery, requirements, vendor management, testing and incident management,
- ASIC Chair, Joe Longo described the conclusion that the project was not ready to go live as 'very disappointing'. He said that ASIC requires assurance that the recommended improvements are 'implemented effectively and result in an overall improvement to ASX's enterprise wide project management practices.'

Next steps:

According to ASIC's statement:

- The ASX has agreed to address the review recommendations and has provided the regulators with a 'high level response' to the review.
- The 'regulators expect ASX to apply the insights from IBM's findings across the ASX Group to ensure existing and proposed projects, including the CHESS replacement program, are managed and implemented appropriately'.
- ASIC will continue to engage with stakeholders on the impact of the outage and has said it will work with industry to identify 'what, if any, broader market adjustments might be necessary to reduce the impact of any future incidents'.

ASIC's separate investigation is still on foot

Separately, ASIC's investigation into the outage and whether ASX met its obligations under its Australian Market Licence is still ongoing.

[Sources: ASIC media release 23/08/2021; RBA media release 23/08/2021]

In Brief | ACCC Chair Rod Sims has flagged that new rules and regulations may be needed in addition to enforcement action by competition regulators globally to address concerns about the dominance of Apple and Google in app marketplaces

[Source: Speech by ACCC Chair Rod Sims to the Global Competition Review Webinar, 'Platforms' dominance of apps market needs to be addressed' 19/08/2021]

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