Governance News

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

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Contents

Diversity

Latest Champions of Change Report highlights the progress achieved this year towards workplace gender equity

Key Takeouts

- The report highlights that the representation of women in leadership roles continues to trend upwards with over 80% of organisations reporting that they moved closer to gender parity in 2021.
- Most organisations report that they are acting on the results of pay equity audits though few organisations publicly disclose the results of these audits
- There was an uptick in the number of organisations offering flexible work arrangements and the proportion of employees reporting they had access to flexible working arrangements increased
- Many organisations reported that they have taken steps to review their approach to workplace sexual harassment. For example: 56% of organisations have instituted regular reporting to the board/executive leadership team on the issue and 75.5% of boards have made a commitment to eradicate it in their organisation

The fourth annual Champions of Change Coalition 2021 Impact Report tracks the progress of 255 member organisations towards workplace gender equity over the past year. An overview of some of the key findings is below.

Key Findings

Increased representation in leadership roles

- 2021 saw progress towards gender balanced leadership:
  - 59.1% of organisations reported they had achieved gender balance in leadership roles in key management roles within their organisation or improved gender balance in these roles as compared with last year
  - 81.9% achieved or moved closer to gender balance overall since 2020
- Recruitment: 84.9% of member organisations had either achieved gender balance in their recruitment or had improved the representation of women in recruitment as compared with last year
- Promotions: 81.9% of organisations indicated that they had achieved gender balance or that the rate at which women are being promoted is higher than the representation of women within the organisation overall

Pay equity

- 69% of organisations indicated that they are acting on the results of their regular pay equity audits
- 25 member organisations are voluntarily disclosing their gender pay gaps in Annual Reporting and public websites
- 66.7% of organisations publicly disclose gender equity targets and progress against them (down from 68.1% in 2020)

Access to flexible working arrangements

- 91.7% of organisations have reviewed/relaunched their approach to flexible work in the past 12 months to reflect 'the opportunities realised' during the pandemic
- 97.2% of organisations have policies/initiatives in place to enable flexible work (up from 94.5% in 2020)
- 83.1% of women and 82.5% of men have access to flexible working arrangements (up from 81% for both groups in 2020)

Addressing workplace sexual harassment

The report also highlights a number of actions being taken by member organisations to proactively 'disrupt' workplace sexual harassment. For example:

- 56% of organisations have instituted regular reporting to the board/executive leadership team on sexual harassment

- 75.5% of boards have made a commitment to eradicate sexual harassment in their organisation and have articulated a zero tolerance position on the issue
- 77.2% of organisations have reviewed reporting options to ensure there are multiple confidential reporting channels available
- 70.1% of organisations have reviewed employee training programs to ensure they support employees to better identify and respond

[Sources: Champions of Change media release 08/12/2021; Full text report: Champions of Change Coalition 2021 Impact Report; Report Summary]

2021 marks the first year where the majority of non-executive FTSE 150 directors are women according to Spencer Stuart's latest report

Spencer Stuart has released its latest annual Board Index tracking trends in board governance practices, including among other things progress towards increased board diversity, at FTSE 150 companies. Some of the key findings relating to board composition/diversity are outlined briefly below.

Increased Board Gender Diversity (but women remain underrepresented in executive and board leadership roles)

- According to the report:
  - women now account for 36% of directorships (up from 24% in 2016 and just 12% in 2011)
  - 2021 is the first year where the majority (51%) of non-executive FTSE 150 directors are women (up from 30% in 2016 and 18% in 2011).
  - there are now zero all-male boards
  - 15 boards have achieved gender parity (up from 10 in 2020)
- However, the report also found that:
  - only 14% of executive directors are women (which is zero increase on last year, but up from 8% in 2016)
  - only 8% of FTSE 150 CEOs are women (up from 5% in 2011)
  - only 9% of FTSE 150 Chairs are women (up from 4% in 2016)
  - the proportion of women holding Senior Independent Director roles has decreased from 34% in 2020 to 26%
  - women remain underrepresented on board level committees with women accounting for only 24% of committee roles (well below the Hampton-Alexander Review target of 33% on executive committees and their direct reports by 2020).

Some progress toward increased ethnic diversity but representation remains very low

The report found signs that boards are reacting to pressure to increase ethnic diversity with representation of directors from minority ethnic backgrounds up compared with previous reports. However, overall representation of ethnically diverse directors remains very low. For example, the report highlights that:

- the proportion of first time directors from minority ethnic backgrounds increased 25% in the last year
- 61% of FTSE 100 companies now include at least one director from a minority ethnic background
- overall, only 11% of directors identify as being from minority ethnic backgrounds

[Source: Spencer Stuart Board Index 2021; FTSE 150 Five and Ten year trends]

Shareholder Activism

Exxon again under activist pressure

- Investor group, the Coalition United for a Responsible Exxon (CURE), has issued a 'report card' assessing Exxon's progress toward meeting shareholder expectations in the six months since the 2021 AGM.
- Broadly, despite the appointment of five new directors to the board in 2021 (including activist Engine No 1 candidates) CURE considers that the refreshed board has not made 'tangible progress' and has awarded it a 'D' overall for its performance.
- Among other issues, CURE points to the following as evidence that there has not been the shift in direction desired by shareholders:
  - the failure to implement the shareholder resolution passed at the 2021 AGM calling on the company to align its lobbying position with the Paris Agreement
  - the lack of alignment between Exxon's emissions reduction targets with a 1.5 degree scenario
  - the fact that emissions reductions targets do not include Scope 3 emissions
- CURE has called for significant and 'immediate' changes at the company including:
  - **Further leadership change:** CURE has called for the appointment of an independent Chair and the

replacement of the current CEO. CURE has also called for the two additional directors due to be added to the board (as already flagged by Exxon) to be appointed by 1 February 2022 to enable time for shareholders to 'evaluate' them prior to the 2022 AGM. CURE has also asked that the company disclose the criteria 'used to discern' their energy industry and climate experience.
- **More ambitious climate strategy/targets:** CURE has called on Exxon to commit to a net zero by 2050 target, and for the adoption of a more ambitious decarbonisation strategy with 5% emissions reductions per year over the next decade and public disclosure of this plan, as well as annual reporting against it.
- **Disclosure:** CURE has called for the alignment of Exxon's climate disclosure with CA100+ benchmarks.
- **Tying incentives to the achievement of climate targets:** CURE has called for the introduction of incentives for the new CEO and other key executives to achieve 1.5 degree aligned targets.

Follow This shareholder climate resolution

- Separately, shareholder activist group Follow This has targeted Exxon with a shareholder resolution calling on the company to disclose medium and long-term targets to reduce Scope 3 emissions, in order to meet the UN-backed targets to limit global warming to below 2 degrees Celsius.
- Exxon has previously been successful in blocking similar resolutions (ie the Securities and Exchange Commission (SEC) has approved applications by the company not to put similar resolutions to the meeting). It is not clear whether the company intends to apply to block this resolution. It is also unclear whether an application to exclude the resolution would be successful given the shift in the SEC's approach ie SEC has issued a new staff legal bulletin that rescinds Staff Bulletins (SLBs) 14 I, J and K (See: Governance News 10/11/2021 at p6)
- Follow This has also filed shareholder climate resolutions at Chevron, ConocoPhillips, Occidental Petroleum, Phillips 66, Shell and BP PLC for the 2022 meetings.

[Sources: CURE media release 09/12/2021; CURE report: "Mid-Term" Report Card For the ExxonMobil Board; Follow This media release 13/12/2021]

Facebook (Meta Platforms Inc) targeted by investors over a range of governance and social issues

An Investor group, the Investor Alliance for Human Rights, has filed eight shareholder proposals on a range of governance and social issues at Meta Platforms Inc (formerly known as Facebook) ahead of the 2022 meeting.

The eight proposals are briefly outlined below.

PROPOSAL TOPIC	DETAIL
Give each shareholder an equal vote	▪ The proposal calls on the company to 'phase out', over the next seven years (or other timeframe 'justified by the board'), the existing unequal dual class share structure. The proposal does not specify how this should be achieved, calling instead for the board to establish a 'fair and appropriate' mechanism. ▪ For context, the company currently has a dual class share structure under which CEO and Chair Mark Zuckerberg has super voting power. ▪ The Investor Alliance for Human Rights notes that NorthStar Asset Management, Inc and the New York State Comptroller Thomas P DiNapoli, Trustee of the New York State Common Retirement Fund, have also re-filed their shareholder proposal calling for the company to implement a 'recapitalisation plan' that would eliminate the existing dual-class structure.
The appointment of an independent board Chair	▪ The proposal calls on the board to 'require henceforth that the Chair of the Board of Directors, whenever possible, be an independent member of the Board'. ▪ For context, currently CEO Mark Zuckerberg has held the role of Chair since 2012. Shareholders are concerned that: 'His [Mr Zuckerberg's] dual-class shareholdings give him approximately 58% of Facebook's voting shares while holding only 14% of the economic interest, leaving the Board, even with a lead independent director, with only a limited ability to check Mr. Zuckerberg's power. We believe this weakens Facebook's governance, accountability, and oversight of management. Selecting an

PROPOSAL TOPIC	DETAIL
	independent Chair would free the CEO to focus on managing the Company and enable the Chairperson to focus on oversight and strategic guidance.'
Addressing online child sexual exploitation	▪ The proposal calls on the company to report by February 2023 on the 'risk of increased sexual exploitation of children' as a result of the development/roll out of new privacy tools (eg end to end encryption). ▪ The proposal further calls for this report to address both the potential adverse impacts to children and to the 'company's reputation or social licence' as well as to assess the 'limits to detection technologies and strategies'.
Increased board oversight of 'harmful user generated content'	▪ The proposal calls on the board to report on why the enforcement of the company's 'community standards' has 'proven ineffective at controlling the dissemination of user content that contains or promotes hate speech, disinformation, or content that incites violence and/or harm to public health or personal safety'
Reporting on the distribution of stock ownership incentives throughout the workforce	▪ The proposal calls on the company to report annually on the 'distribution of stock ownership incentives throughout the workforce (such as but not limited to performance share units, employee stock purchase plans, restricted stock units, and options)'. ▪ The proposal further calls for the report to include a breakdown by employee category of 'stock ownership granted and utilised by all US Company employees and including associated voting power, if any'. ▪ Proponents consider disclosure around how incentive shares are currently distributed to employees a first step towards the broader aim of addressing inequality and establishing an 'ownership culture' where 'all Americans are shareholders with a voice in corporate activity, especially at corporations where they are employed'.
Grant shareholders an advisory vote on the company's 'Metaverse' project	▪ The proposal calls on the board to commission an assessment and publish a report on the company's 'metaverse' project including the 'potential psychological and civil and human rights harms to users that may be caused by the use and abuse of the platform'. ▪ The proposal also calls on the company to give shareholders a non-binding advisory vote to approve or disapprove the metaverse project.
Human Rights Impact Assessment on the targeted advertising model	▪ The proposal calls for the publication of an independent Human Rights Impact Assessment on the 'actual and potential human rights impacts of Facebook's targeted advertising policies and practices throughout its business operations'. ▪ The proposal calls for the company to publish the assessment on its website by 1 June 2023.
Performance review of the Audit and Risk Oversight Committee	▪ The proposal calls for the board to commission an independent performance assessment of the Audit and Risk Oversight Committee.

[Source: Investor Alliance for Human Rights media release 13/12/2021]

Disclosure and Reporting

What do potential new global sustainability disclosure standards mean for Australian listed entities as things stand currently? ASIC outlines its views

The Australian Securities and Investments Commission (ASIC) has issued a statement welcoming planned development of global baseline climate and sustainability disclosure standards by the International Sustainability Standards Board (ISSB).

ASIC's statement also provides some insight into ASIC's views on the implications for Australian companies as well as ASIC's role.

Implications for Australian listed entities

- ASIC 'encourages' listed companies to report in alignment with the Taskforce on Climate Related Financial Disclosure (TCFD) recommendations and to consider the guidance published by the TCFD including October 2021 Guidance on Metrics, Targets, and Transition Plans. ASIC considers that this is likely to mean these companies will be 'well placed to transition to any future standard'.
- ASIC confirms that the existing requirement for listed entities to prepare an Operating and Financial Review (OFR) is unchanged. ASIC's regulatory guide - ASIC Regulatory Guide 247 Effective disclosure in an operating and financial review – also remains current.
- ASIC also refers directors and senior managers to the recommendations in ASIC Report 593 Climate risk disclosure by Australia's listed companies (summarised) which encapsulates the regulator's views on the consideration and disclosure of climate risk.

ASIC's role

ASIC states that it will continue to monitor developments in climate/sustainability reporting domestically and internationally and provide input to the ISSB, through its membership of the IOSCO Sustainability Technical Experts Group.

ASIC plans to 'consult with stakeholders to better understand the practical implications of international developments on Australian listed companies and developing disclosure practices in Australia'. ASIC intends to provide further updates as ISSB standards develop.

[Source: ASIC media release 14/12/2021]

ASIC focus areas for 31 December 2021 financial reports

The Australian Securities and Investments Commission (ASIC) has flagged a number of focus areas for entities with financial reporting periods ending 31 December 2021 in light of the ongoing uncertainty caused by the COVID-19 pandemic.

In particular, ASIC has called on directors, preparers of financial reports and auditors to pay particular attention to the following issues.

- asset values
- provisions
- solvency and going concern assessments

- events occurring after year end and before completing the financial report
- disclosures in the financial report and Operating and Financial Review (OFR).

ASIC's statement includes a non-exhaustive list of suggested factors that may affect asset values, provisions and assessments of solvency and going concern. ASIC also points entities to the frequently asked questions on the impact of COVID-19 on financial reports and audits.

ASIC emphasises (among other things) that 'assumptions underlying estimates and assessments for financial reporting purposes should be reasonable and supportable'.

The OFR

With respect to the OFR, ASIC states that it should:

> 'complement the financial report and tell the story of how the entity's businesses are impacted by both the COVID-19 pandemic and by non- COVID-19 factors. The underlying drivers of the results and financial position should be explained, as well as risks, management strategies and future prospects. Forward-looking information should have a reasonable basis and the market should be updated through continuous disclosure if circumstances change'.

ASIC also suggests that it may be appropriate to include discussion of climate risk where it has a material impact on entities future prospects. ASIC states that 'Directors may also consider whether to disclose information that would be relevant under the recommendations of the Task Force on Climate-related Financial Disclosures'.

On the issue of disclosure of COVID-19 related support (eg from government, lenders, landlords etc) ASIC expects that:

> 'Both the financial report and OFR should prominently disclose material amounts, as well as the commencement date and either the end date or expected duration of support or assistance. Examples include JobKeeper, land tax relief, loan deferrals and restructuring, and rent deferrals and waivers. Entities should also disclose the amount of any material voluntary returns of JobKeeper or other support or assistance'.

ASIC confirms that the financial report and OFR 'must disclose relevant information about JobKeeper even though listed entities must also include information in a JobKeeper notice provided to a market operator;.

The reporting process

ASIC expects:

- that particularly in more 'difficult and complex areas' eg asset values and other estimates, entities ensure that 'appropriate experience and expertise' is applied in the reporting and audit process
- directors and auditors are given 'sufficient time' to 'consider reporting issues and to challenge assumptions, estimates and assessments'.
- directors to make 'appropriate enquiries' of management to ensure that internal controls/processes have been effective during period of remote work
- that judgements on accounting estimates and forward looking estimates including the basis for the judgements and the circumstances in which they are made is 'properly documented at the time and disclosed as appropriate'.

[Source: ASIC media release 09/12/2021]

Regulators

Government nominates Gina Cass-Gottlieb as the next ACCC Chair

- The government has nominated Gina Cass-Gottlieb to be the next Chairperson of the Australian Competition and Consumer Commission (ACCC).
- The Treasurer has written to states and territories to seek their support for Ms Cass-Gottlieb's appointment ahead of recommending her appointment to the Governor General.
- It's anticipated that Ms Cass-Gottlieb will take up her new role from 21 March 2022, for a term of five years.
- The Treasurer thanked outgoing ACCC Chair Rod Sims for his leadership of the regulator over the past 10 years.

[Source: Treasurer Josh Frydenberg media release 14/12/2021]

APRA Chair reflects on the key 'lessons' from the pandemic

In his keynote address to a meeting on the post COVID-19 banking system sponsored by the Arab Monetary Fund, Financial Stability Institute, Bank for International Settlements and the Basel Committee on Banking Supervision, Australian Prudential Regulation Authority (APRA) Chair Wayne Byres reflected on the six key lessons to have emerged from the COVID-19 pandemic from a regulatory/supervisory perspective.

The table below provides a high level overview of some of the key points from Mr Byres' address.

SIX 'LESSONS' FROM THE PANDEMIC	DETAILS
Value of building a 'strong foundation'	▪ Mr Byres said that the pandemic underscored the importance/value of building financial and operational strength 'in good times' in order to be in a position to weather future uncertainty. 'Whatever the post-COVID world looks like, it is unlikely to be one in which a stable and resilient financial system is not an essential prerequisite to ongoing economic prosperity' he said.
Value of being 'prepared for the unexpected'	▪ Mr Byres said that the pandemic also highlighted the value in being prepared for/having contingency plans in place to manage credible future threats, however unexpected. He observed: 'In Australia, we have had prudential guidance on pandemic planning for more than a decade, and it has certainly proved its worth. Building on the lessons from those earlier viruses, the guidance helped ensure financial institutions had business continuity plans that were tailored to a pandemic-style event. It also provided a ready framework for our supervisors to engage with regulated firms, to understand and assess their capabilities and readiness to handle disruption, and to quickly identify risks and exposures that may not be being well handled. The lessons we learnt in handling this disruption should strengthen contingency planning into the future, regardless of the direction from which the next unexpected stress event comes'.
'Third party suppliers are increasingly critical for operational resilience'	▪ Mr Byres described the pandemic as a 'real-world stress test of operational risk management' which revealed that 'often' the 'biggest vulnerabilities' in financial firms' systems/processes is in their third party partners/supplier arrangements. ▪ Mr Byres observed that when 'these suppliers are essential for the provision of critical functions, as is increasingly the case, financial supervisors need to think harder about how to gain assurance as to their robustness' and even more so where the same third party supplier is 'critical' to multiple firms. ▪ In light of this risk, Mr Byres said that a key project for APRA in 2022 will be to review existing prudential requirements for operational risk management, service provision and business continuity. He observed: 'There have been a lot of lessons over the past couple of years, and having built a financially resilient financial system, we need to make sure there is operational resilience to match. Internationally, standard-setters like the Basel Committee could assist by devoting serious thought to how to best coordinate the supervisory assessment of the global SIPs, since a decentralised national approach is unlikely to be efficient or effective'.
The value of data and transparency from a regulatory/supervisory perspective	▪ Mr Byres said that the pandemic had 'disrupted many models of supervision', especially those dependent on regulator/intensive on-site supervision. In response, supervisors have become more data-driven in their approach and have increased the use of data, and techniques such as machine learning, to assess non financial risks. Having said this, Mr Byres made clear that he does not consider that these new techniques have/will replace the 'traditional on-site inspection'. Rather he thinks it likely that both will 'continue to play fundamental roles in the art of prudential supervision'. ▪ Mr Byres also observed that

SIX 'LESSONS' FROM THE PANDEMIC	DETAILS
	'COVID-19 also reminded us the importance of good data for financial markets…We do not need analysts, investors or rating agencies to over-estimate the size of the problem by assuming the worst in the absence of information – they will tend to run first and ask questions later'. In illustration, Mr Byres observed that in the Australian context, APRA began publishing data on repayment deferrals to assure markets that there were 'no hidden surprises lurking in banks' books'.
Courage on the part of regulators to 'act counter-cyclically' in 'bad times' needs to be replaced with confidence to do so	▪ Mr Byres observed that despite the fact that the Basel framework is intended to provide flexibility – to make sure capital buffers are in place to absorb losses should it become necessary – watching buffers decline could be 'unnerving for a supervisory who has been trained to think that the higher the ratios, the better'. ▪ Mr Byres said that it took 'a degree of courage to not just watch, but also explicitly encourage, capital and liquidity to be consumed'. ▪ Mr Byres called on regulators to 'find ways to replace courage with confidence', suggesting that 'good stress testing capability' would assist in this. ▪ Mr Byres further suggested that having 'flexibility – especially in the form of macroprudential-type tools – built into the prudential framework' could be 'very effective in helping financial firms and markets understand the supportive impact of regulatory adjustments – and sometimes, the signalling effect can be more impactful than the size or specifics of the regulatory change itself'.
The importance of regulators not losing sight of 'bigger trends'	▪ Mr Byres said that it is important for regulators not to allow their focus on the pandemic to stand in the way of monitoring/responding to and adapting to emerging trends. He observed: 'Regulation rarely keeps pace with the leading edge of innovation (and nor should it be expected to) more typically, the regulatory frameworks and supervisory methods we use today are a product of the financial institutions of yesterday. That may not be too concerning if the pace of change is relatively sedate. But the pace of change today seems extremely rapid. So, I'll conclude by emphasising that, as important as it is that we continue to support our financial systems, economies and communities through the cost and disruption that COVID-19 has created, we can't allow it to cause us to fall any further behind the rapid change in the structure of the financial system that is occurring at the same time'.

[Source: APRA Chair Wayne Byres Remarks to the AMF-BCBS-FSI High-level meeting on the post COVID-19 banking system 10/12/2021]

Financial Services

Top Story | Australia to catch the tail of the crypto and payments tiger in 2022

The government has released its response to the 41 recommendations made by three recent reviews into Australia's current payment systems regulatory framework.

The MinterEllison team provides an overview of the government's response and planned next steps to significantly overhaul and modernise existing requirements.

You can find the full text of the article here.

Top Story | Reforging financial services law

On 30 November 2021, the Australian Law Reform Commission (ALRC) released its first Interim Report setting out its initial recommendations, proposals and questions for the reform of financial services law. The MinterEllison team discusses the key recommendations and the possible implications.

You can find the full text of the article here.

Top Story | Targeting predatory lending: ASIC consults on two product intervention orders

Overview of the proposals in CP 355 Product Intervention Orders: Short term credit and continuing credit contracts

The Australian Securities and Investments Commission (ASIC) is consulting on proposals to make two separate product intervention orders - a short term credit product intervention order and a continuing credit contracts product intervention order - to address what it considers to be the likely/actual 'significant consumer detriment' caused by certain lending practices.

The due date for submissions is 21 January 2022.

Why the proposed orders are considered necessary

With respect to the short term credit product intervention order, ASIC raises concerns that if the proposed order is not made, entities may resume or start issuing credit facilities of the type banned by the 2019 order - ASIC Corporations (Product Intervention Order—Short Term Credit) Instrument 2019/917 (summarised) - that expired in March 2021. ASIC observes that two companies registered in March 2021 – BSF Solutions Pty Ltd and Cigno Australia Pty Ltd – may already be issuing short term credit facilities of this kind.

ASIC further observes that providers of the products targeted by the 2019 order, subsequently switched to issuing continuing credit contracts of the type being targeted by the proposed continuing credit contracts product intervention order.

In light of this, ASIC's view is that both orders are

> 'necessary to stop the likely impact of significant detriment occurring in both the short term credit and continuing credit markets to retail clients'.

The proposed short term product intervention order

The 2019 order targeted a specific lending model which benefitted from the short term credit exemption and which ASIC considered resulted in significant detriment to retail clients.

Broadly, the order banned the charging of collateral fees/charges by short term credit providers and/or their associates, in 'circumstances where the credit fees and charges under the credit contract and the collateral fees and charges under a collateral contract, together, exceed the limits in the short term credit exemption'.

ASIC proposes that the new order would be drafted in similar terms to the 2019 order with some refinements. For example:

- ASIC proposes that the new order will define credit fees and charges and interest charges to make it clear which fees are captured by the conditions

- ASIC also proposes that the new order will specify that the credit fees and charges, interest charges and other fees and charges that are captured are only those that are paid or payable by a retail client.

The full text of the proposed order is here.

The proposed continuing credit contracts order - targeting 'payday loans' marketed to low income/unemployed people

Separately, ASIC also proposes to prohibit the use of certain continuing credit contracts that it also considers cause 'significant consumer detriment' to vulnerable customers.

Broadly, ASIC proposes to impose an industry wide product intervention order that would impose a cost cap on the total fees that can be charged under continuing credit contracts targeted at low income/unemployed retail clients as set out in Consultation Paper 330 Using the product intervention power: Continuing credit contracts (CP 330) (summarised here) and the Addendum to CP 330 on which ASIC previously consulted.

In putting forward its proposal, ASIC makes clear that the proposed order does not seek to prohibit providers of continuing credit contracts from continuing to rely on the continuing credit contracts exemption in s6(5) of the National Credit Code, only that they comply with the conditions in the proposed order.

Proposed drafting changes

Though similar to the proposed order previously consulted on, ASIC's current proposal differs in some respects. For example:

- The definition of buy now pay later arrangements has been amended and the scope of the exemption broadened
- The definition of collateral contract has also been amended to state that it is a 'contract or arrangement (without limitation) for the continuing credit provider or an associate to provide services to the retail client in relation to the continuing credit contract'
- The proposed order now also makes clear that the fees and charges prohibited under the order are only those fees and charges that are paid or payable by a retail client

The full text of the proposed order is here.

ASIC has cautioned that it may take further action if needed

As flagged, ASIC observes that the lending model being targeted by the proposed continuing credit contracts order appears to have been introduced into the market after ASIC made the 2019 order. That is, that the providers appear to have adapted their lending model to circumvent the 2019 order.

ASIC makes clear that it will not hesitate to take further action if (assuming the proposed orders are made), businesses adopt a similar course. ASIC states:

> 'Given the history of this issue, it is possible that businesses may seek to develop new models to circumvent the operation of the order. For example, businesses may seek to characterise themselves as buy now pay later arrangements but adopt models that have resulted in, or will or are likely to result in, significant detriment to retail clients. If this occurs, ASIC will consider further action as necessary, including amending the order'.

Next steps

- The due date for submissions is 21 January 2022.
- Subject to feedback on the consultation and subject to the Minister's written approval, ASIC proposes to make the short term credit product intervention order some time between January and March 2022.
- Subject to feedback on the consultation, the proposed timeframe for the continuing credit product intervention order is also some time between January and March 2022.

[Sources: ASIC media release 09/12/2021; CP 355 Product intervention orders: Short term credit and continuing credit contracts; Attachment 1 to CP 355; Attachment 2 to CP 355]

ASIC Commissioner reflects on the key developments for the credit sector in 2021

In his address to the 31st Annual Credit Law Conference, Australian Securities and Investments Commission (ASIC) Commissioner Sean Hughes reflected on some of the key developments for the credit sector in 2021, ASIC's work in these areas and ASIC's expectations going forward.

A high level overview of some of the key points from his address is below.

Overview

- **Financial hardship:** ASIC has been monitoring the measures being implemented by industry to assist consumers experiencing financial difficulty as a result of the COVID-19 pandemic. Mr Hughes observed that though most consumers who deferred mortgage repayments in 2020 have resumed making normal repayments, some continue to 'struggle'. He encouraged lenders to continue to work with these consumers to 'find appropriate solutions'. Mr Hughes said that ASIC has observed that the pandemic has prompted a number of lenders to scrutinise their financial hardship policies/processes and that this has led to improvements. Mr Hughes called on lenders to 'embed' these improvements into their business as usual activities.
- **Law reform:** Mr Hughes observed that 2021 saw the implementation of a number of regulatory changes that significantly strengthen consumer protections. Mr Hughes emphasised that these changes are a reflection of changing community expectations and that over time, the changes will mean that a 'consumer-first mentality will become second nature for all participants in the financial and credit markets, irrespective of size, scale, channel, or focus'.
- **Design and distribution obligations (DDO):** Commenting briefly on the introduction of DDO, Mr Hughes reiterated that initially ASIC will be focused on whether providers are using their 'best endeavours' to comply with the new requirements. Mr Hughes also offered some early observations on credit card target market determinations (TMDs). He said that so far, ASIC has observed that some credit card issuers have made changes to their product offerings, distribution practices and promotional material. He added that ASIC has provided 'tailored feedback to some issuers where TMDs have not met our expectations, particularly around the level of specificity and corresponding review triggers'.

  Mr Hughes said that TMDs that

  > 'rely on consumer preference or intended use of the product are unlikely to result in compliance with the appropriateness requirements, as this is not consistent with the purpose of the provisions to shift onus for appropriate product design and distribution to the issuer'.

  Rather ASIC's expectation is that the

  > 'language used to define the target market should be both objective and specific, keeping in mind that consumers' likely objectives, financial circumstances, and needs do not always align. Review triggers should reflect the target market, be product specific, and take into account risks to appropriate consumer outcomes'.

  In illustration, Mr Hughes said that where a credit card has an annual fee, ASIC expects there to be 'review metrics associated with low utilisation, and where a balance could be held at a high interest rate, we expect to see persistent debt review metrics'.

  Mr Hughes said that ASIC expects credit card issuers to continue to 'refine' their approach and flagged that 'the use of data to inform decision-making focused on consumer outcomes is likely to be an area of interest for ASIC going forward'.
- **Buy now pay later (BNPL) sector**:
  - Observations on early BNPL TMDs: Mr Hughes also shared some early observation of TMDs in the buy now pay later (BNPL) context. Broadly, ASIC considers that 'some TMDs are too broadly worded' and not sufficiently tailored to the 'offering and its key attributes'. Mr Hughes made clear that ASIC is unlikely to consider a 'broad consumer objective or preference alone' eg 'the consumer is seeking to split their repayments' to be 'sufficient to define the target market'. With respect to review triggers, Mr Hughes said that ASIC 'envisages engaging with some providers to better understand the underlying metrics that would prompt a review'.
  - BNPL Code of Practice: Mr Hughes said that ASIC will continue to engage with the Australian Finance Industry Association on their BNPL Code of Practice. He observed that ASIC has also observed some new entrants adopting the BNPL Code instead of the AFIA Code. Mr Hughes further observed that 'unfortunately, there are providers that are not signatories to either code, which causes some concern'.
- **Breach reporting:** Commenting briefly on the benefits of the new breach reporting obligations that came into effect in October 2021, Mr Hughes said that the new requirements would allow ASIC to 'not only detect significant non-compliant behaviours earlier – and act sooner – but also assist us to identify and address trends of non-compliance across the industry as they emerge'. Mr Hughes said that ASIC considers that early identification of reporting breaches may 'ultimately help the credit industry avoid significant delays through complex and costly remediation

programs the rest of the financial services sector has encountered under the pre-existing regime'. Mr Hughes also suggested that the changes will give licensees and boards 'greater confidence that they are doing the right thing' and, noting ASIC's obligation to publish breach reporting data commencing late 2022, provide 'greater transparency'.

- Remediation remains a focus for ASIC:
  - Mr Hughes noted that ASIC has recently released for consultation, proposed updates to its regulatory guidance on how licensees should conduct remediations.
  - Mr Hughes emphasised the scope of remediation activity currently underway, noting that ASIC is monitoring 64 remediations that are expected to return approximately $5.4 billion to more than 5.6 million customers or small businesses. He observed that these figures do not reflect all the remediations currently being undertaken but only those with ASIC involvement.
  - Mr Hughes said that ASIC has observed 'systemic under investment in systems that have led to significant failures in the delivery of benefits, discounts, or waivers as promised' especially in the credit and banking sectors. He called on licensees to 'prioritise identifying and remediating problems earlier, especially in times of economic volatility'.
- Debt management services:
  - Mr Hughes said that ASIC welcomes the introduction of new requirements for debt management firms to: a) hold an Australian Credit Licence when they are paid to act as a consumer representative in disputes with financial firms; b) to be members of the Australian Financial Complaints Authority (AFCA); and c) to undertake their activities 'efficiently, honestly and fairly'.
  - Mr Hughes said that the protection of vulnerable customers remains a focus for the regulator and following on from ASIC's 2016 research, ASIC expects to see improvements in how debt management services are provided. In particular, Mr Hughes said that debt management firms need to ensure they are providing services to consumers in an 'appropriate and fair manner' including that: a) 'promotional material does not create unrealistic expectations for consumers', and b) services offer tangible benefits to consumers.
- Looking ahead to 2022: Mr Hughes briefly touched on a number of ASIC's work projects for the new year. These include:
  - Development of ASIC's Indigenous Financial Services Framework: AISC is using the learnings from a number of consultations to develop an Indigenous Financial Services Framework which will 'shape' ASIC's engagement with Aboriginal and Torres Strait Islander peoples and provide an opportunity for others to 'engage with the learnings'. Mr Hughes said that AISC 'will work together to collaborate where we can drive positive financial outcomes based on the values, priorities, and perspectives of Indigenous Australians'. Looking ahead, ASIC intends to 'engage with financial services providers and industry associations from other sectors as well as government departments and agencies with shared priorities to improve collaboration, use of data and information sharing'.
  - Consultation on relief for simple arrangements following a credit hardship notice: Mr Hughes noted that ASIC is currently seeking views on the possible extension of relief under Class Order [CO 14/41] - ie the written notice exemption for credit providers and lessors who enter into simple arrangements with consumers in hardship - to 1 April 2024 or to allow the class order to expire on 1 March 2022 (covered separately below).
  - Proposed new product intervention orders for short term credit and continuing credit contracts: ASIC is also consulting on proposals to use of its product intervention powers to make product intervention orders (also covered separately in this issue of Governance News).

  [Source: Speech by Commissioner Sean Hughes at the 31st Annual Credit Law Conference 09/12/2021]

ASIC is consulting on the possible extension of relief for simple arrangements following a credit hardship notice

ASIC has released a consultation paper - Consultation Paper 354 ASIC relief for simple arrangements following a hardship notice: [CO 14/41] (CP 354) – seeking views on whether to:

- extend until 1 April 2024 the existing written notice exemption in Class Order [CO 14/41], relieving credit providers and lessors from the obligation to provide written notice to consumers about hardship contract variations of 90 days or less (known as 'simple arrangements'), without 'significant changes'; or
- allow CO 14/41 to expire on 1 March 2022. If the class order is allowed to expire it will mean that relief from written notices for simple arrangements will no longer be available after 1 March 2022.

The consultation paper makes clear that ASIC is likely to 'form the view that relief should continue beyond 1 March 2022' if submissions indicate that: a) credit providers are relying on the existing relief; b) the operation of the relief is not having a detrimental impact on consumers; and c) if ASIC considers that the existing relief 'continues to be a useful part of the regulatory framework'.

The consultation paper further comments that extending the relief until 1 April 2024 will 'maintain the status quo' while allowing time for ASIC to make recommendations to Treasury to 'consider permanent modifications of the requirements in the National Credit Code'.

In reaching its decision, ASIC states that it will consider the regulatory and financial impact of the two options 'to strike an appropriate balance between: (a) reducing business costs; and (b) promoting a fair, strong and efficient financial system for all Australians'.

The due date for submissions is 1 February 2022.

> [Sources: ASIC media release 08/12/2021; Consultation Paper 354 ASIC relief for simple arrangements following a hardship notice: [CO 14/41] (CP 354); Attachment to CP 354: Draft legislative instrument]

Independent Review of the Banking Code Compliance Committee released

The Banking Code Compliance Committee (BCCC) released the Final Report of the Independent Review of the BCCC, conducted by Phil Khoury (Khoury Review) The review is the first to be undertaken since the BCCC succeeded the previous compliance body, the former Code Compliance Monitoring Committee (CCMC) and the first to be undertaken since the introduction of the 2018 Banking Code of Practice.

Broadly, the focus of the Review was on the role and powers of the BCCC, and whether these remain appropriate and the effectiveness of the BCCC's performance of its role and whether/how this could be improved.

The release of the Khoury Review follows the recent release of the Final Report of the independent review into the Banking Code of Practice (Callaghan Review) (summarised) and there is some overlap both in terms of the scope of the reviews and their recommendations. In so far as the two Reviews overlap, the approach taken and the recommendations appear to be consistent.

The BCCC has been effective in its role (though there is room for improvement)

A headline conclusion of the Khoury Review is that the BCCC has 'successfully pivoted from the CCMC' and has broadly been effective in the performance of its dual functions. The report states:

> 'The BCCC Compliance Statement reports provide a broad overview of Code compliance, whilst Inquiry Reports provide an in-depth look at specific areas of Code implementation. The BCCC has also taken enforcement action against individual banks where particular issues have arisen. We heard respect from stakeholders for the BCCC's work'.

The report nevertheless includes 19 recommendations to strengthen the BCCC's performance. A full list is included at p53 of the report.

Some Key recommendations

A number of recommendations are focused on improving/streamlining the reporting process to the BCCC. These include:

- Streamlining reporting requirements:
  - Recommendation 8 recommends that the BCCC work with the Australian Banking Association (ABA) and the banks to 'refine' its Compliance Statement data collection with a view to making the process more efficient.
  - Recommendation 10 recommends that 'once practices for reportable situation reports by banks to ASIC have achieved a settled rhythm, the BCCC should revisit which of these matters it wants banks to contemporaneously report to the BCCC and how this can occur in a way that is efficient for banks and the BCCC'.
  - This approach appears to be consistent with the approach in the Callaghan review which also included recommendations (Recommendations 105 and 106) to streamline reporting, but otherwise rejected stakeholder calls to limit it.
- Giving speedier feedback to banks: Recommendation 7 recommends that the BCCC 'commit to a strategic priority of significant improvement within 3 years in the speed of its reporting on banks' periodic Compliance Statements. To achieve credibility, the BCCC reporting should be complete within 90 to 100 days of the close of the banks' reporting deadline'.

- Naming individual banks: Recommendation 10 recommends that the BCCC 'transition to public reporting about bank Compliance Statements on a named basis for the financial year commencing July 2023, providing both banks and the BCCC with a full cycle of reporting before then to iron out problems'.

On the issue of sanctions, the report does not recommend that the BCCC be empowered to impose financial sanctions (consistent with the Callaghan Review). The report does however recommend that the BCCC should have power to both:

- 'report serious or systemic non-compliance to ASIC' whether or not the non-compliance is ongoing (Recommendation 16).
- 'compel a signatory bank that has been named by BCCC to publish on its website: a) the fact of its naming b) information about the cause and impact of the breach(es) c) information about its corrective action' (Recommendation 17). This overlaps with Recommendation 110 of the Callaghan review.

The report also addresses the role of the BCCC where the BCCC identifies non-compliance warranting customer financial remediation. Recommendation 18 recommends that where this occurs the BCCC should 'enter into an arrangement with AFCA so that when the BCCC finds non-compliance that warrants customer remediation, it can refer the issue of remediation to AFCA's Systemic issues Team to discuss with the bank'.

Separately, the report recommends that the BCCC's approach to agribusiness and small businesses could be improved through 'revitalising' the small business and agribusiness advisory panel (Recommendation 4) and the appointment of a fourth member to the BCCC with expertise in small business/agribusiness (Recommendation 5).

[Sources: BCCC media release 13/12/2021; BCCC Independent Review Report]

APRA is consulting on proposed updates to prudential standards to integrate AASB 17 into the capital and reporting framework for insurers and updates to the LAGIC framework

- Following consultation, the Australian Prudential Regulation Authority (APRA) has released a number of draft prudential and reporting standards for consultation, aimed at integrating AASB 17 into the insurance capital and reporting frameworks.
- APRA explains that the proposed changes to the standards are necessary as AASB 17 Insurance Contracts (AASB 17), which is due to come into effect from 1 January 2023, will replace the accounting standards on which APRA's current life and general insurance capital (LAGIC) framework and reporting framework are based. APRA is also taking the opportunity to update 'other aspects of LAGIC', which have not been substantively reviewed since it was implemented in 2013.
- APRA comments that
  - for the capital framework, 'the majority of the existing requirements for the regulatory capital calculation for general insurers and life insurers will be maintained'.
  - for the reporting framework, insurers will be able to use AASB 17 accounting policies and principles to report financial statement information to APRA. APRA proposes to introduce new data requirements to ensure it 'continues to have appropriate data for capital assessments and profitability monitoring'.

Relevance of the changes for PHIs

ASIC flags that these changes are also relevant for private health insurers in light of APRA's intention to 'align the private health insurance capital framework to LAGIC'.

Planned timing:

- Consultation on the draft standards is open until 31 March 2022.
- APRA intends to release the final standards in the second half of 2023.

Consultation documents

- The consultation documents are available here.
- In addition to the draft prudential standards for general insurers and separately life insurers, APRA has also released a response paper setting out its response to stakeholder feedback on the November 2020 discussion

paper, an information paper summarising the response paper and separate Quantitative Impact Studies (QIS) (one for general insurers and one for life insurers)

[Source: APRA media release 13/12/2021]

APRA is consulting on proposed changes to capital and reporting standards for private health insurers

- On 13 December 2021, the Australian Prudential Regulation Authority (APRA) has launched a further consultation on proposed draft capital and draft reporting standards aimed at strengthening the capital framework for private health insurance (PHI) and aligning with AASB 17.
- The proposed new framework is based on the life and general insurance capital framework (LAGIC), though it has been 'adapted to suit the different features of PHI'.
- APRA comments that though the proposals would increase minimum capital requirements, 'the industry is very well-capitalised and already holds capital significantly in excess of the new proposed regulatory minimums. APRA's assessment is that no insurer would need to increase premiums or raise equity to meet the higher minimum capital requirements'.

Deputy Chair Helen Rowell explained the rationale for the proposed changes as follows.

> 'Although Australia's private health insurance industry remains well capitalised, the PHI capital framework is currently less robust than the framework for other APRA-regulated insurance industries. It's also not sufficiently sensitive to the specific risks health insurers face, especially at a time when industry profitability is being adversely impacted by an ageing membership profile and rising costs. These changes seek to address current weaknesses in the capital framework, and bring it in line with the framework we use for other insurance industries'.

Planned timeline

- Consultation on the proposed new capital framework will close on 31 March 2022. APRA intends to hold industry forums early next year as part of the consultation process.
- APRA plans to release the final standards in the second half of 2022 for implementation on 1 July 2023.

[Source: APRA media release 13/12/2021; Review of the private health insurance capital framework]

ASIC calls on super funds to 'improve the extent and quality of disclosures to members' relating to IP offsets in default income protection insurance policies

- The Australian Securities and Investments Commission (ASIC) conducted a review of the value of default income protection (IP) insurance provided to superannuation fund members through their superannuation fund. The review looked at the practices of five unnamed large funds – four industry funds and one retail fund.
- The funds included in the review were selected based on the high number and/or percentage of members with MySuper products holding IP insurance
- For context, the focus of the review was on 'offset' clauses in IP insurance policies. ASIC observes that most IP policies contain some form of 'offset' clause which operate to reduce (or offset) the benefit where the individual receives certain other kinds of income support (eg sick leave). These offset clauses are 'intended to reduce incentives for members to delay their return to work as a result of receiving more income while disabled than they did previously'.
- The review builds on ASIC's Report 675 Default insurance in superannuation: Member value for money (REP 675) (summarised in Governance News 20 January 2021 at p25).

Review findings

ASIC Commissioner Danielle Press said that the review identified that trustees are not:

> 'proactively giving their members clear explanations about when insurance benefits would or would not be paid as a result of offsets…Moreover, the offset clauses we saw have raised questions about whether trustees should be doing more to identify if there are groups of members who may be getting low value from default IP insurance'.

For example ASIC found that:

- the scope/coverage of 'offset' clauses varied – the forms of income support and the combinations of income support covered differed
- 'disclosures about offset clauses were incomplete and difficult to understand'. For example, the language used to describe offset clauses was 'often technical and legalistic' and explanation of how they operate was lacking
- trustees were 'unable to demonstrate that they had sought reliable data on offsets and used it to review the appropriateness of their default IP offering'.

In making these observations Ms Press made clear that the inclusion of offset clauses in IP insurance policies is not the issue per se. Ms press stated:

> 'Our concern is not that offset clauses exist. Rather, it is the potential for insurance premiums to unnecessarily erode members' superannuation balances if offset clauses mean that particular groups of members get very little value from their default insurance if they need to claim'.

ASIC's expectations

- ASIC has written to the five trustees outlining specific findings and areas for improvement.
- To address these issues, ASIC has called on trustees to take the following three steps:
  - 'obtain and analyse data, including from their insurer, to assess how offsets affect member outcomes, including whether some groups of members are receiving low or no value;
  - improve the extent and quality of disclosures to members relating to IP offsets, especially when a member's IP insurance will pay a reduced benefit; and
  - clearly explain to their members how 'offset' clauses work, so that members can make informed decisions about their insurance'.
- Ms Press flagged that ASIC plans to undertake a surveillance on the progress made by industry more broadly in insurance in superannuation and encouraged trustees address ASIC's concerns. Ms Press stated:

  > 'I strongly encourage trustees to consider these findings alongside the issues we previously raised regarding default insurance and take meaningful steps to enhance member outcomes'.

Life insurers

- Separately, ASIC sought data directly from three large, but unnamed, life insurance companies that provided insurance for the five trustees in the review.
- ASIC has raised concerns directly with the insurers about the quality of the data provided. Specifically, ASIC considers that the data was 'insufficient to determine the proportion of claims with an offset or the types of income that are offset and the impact on insurance benefit payments'. ASIC has asked the insurers to 'consider what changes need to be made to their systems and practices' in order to address these issues.
- Ms Press flagged that as part the surveillance, ASIC will be seeking 'comparable and reliable data relating to IP offsets' from life insurers.

  [Source: ASIC media release 10/12/2021]

APRA is consulting on 'minor' amendments to Prudential Standard SPS 310 Audit and Related Matters

The Australian Prudential Regulation Authority (APRA) is consulting on proposed changes to Prudential Standard SPS 310 Audit and Related Matters (SPS 310). APRA considers that the changes are necessary to bring SPS 310 into alignment with APRA's reporting standards for superannuation. Broadly, APRA proposes to update SPS 310 to:

- remove the requirement to review seven (soon to be superseded) reporting standards
- require assurance over six new reporting standards. APRA comments that 'most of the new reporting standards that necessitate independent assurance will replace equivalent RSE and MySuper product level reporting after a short period of parallel reporting'.
- leave the requirements applying to six existing reporting standards unchanged.
- Full details of the proposed changes are included in a letter to RSE licensees and RSE auditors here.

The due date for submissions is 11 March 2022.

[Sources: Letter to RSE licensees and RSE auditors - Consultation on minor amendments to Prudential Standard SPS 310 Audit and Related Matters; APRA media release 10/12/2021]

APRA provides update on APS 220 implementation

The Australian Prudential Regulation Authority (APRA) has provided an update on the implementation of APS 220 Credit Risk Management which was released in 2019 and which ADIs will be required to meet from 1 January 2022.

APRA states that the proposed 'minor revisions' consulted on in 2020 to ensure alignment with the government's proposed changes to consumer credit laws will not be progressed 'at this stage' as the changes were contingent on the passage of the legislation.

[Note: The legislation referred to appears to be the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 which among other things would (if legislated) roll-back of responsible lending obligations (discussed in more detail here)]

APRA is however currently consulting on a proposed new attachment to APS 220, Attachment C – Macroprudential policy: credit measures.

Broadly the proposed changes in Attachment C would require ADIs to: a) 'ensure they have the ability to limit growth in particular forms of lending'; b) 'moderate higher risk lending during periods of heightened systemic risk or meet particular lending standards, at levels determined by APRA'; and c) 'ensure there would be adequate reporting in place to monitor against limits'.

Submissions on the proposed changes are due by 28 February 2022. APRA plans to finalise its response in H1 2022. It's envisaged that the changes would come into force 'shortly thereafter'.

[Source: APRA media release 10/12/2021]

SAFAA has welcomed Labor's election promise to roll back mandatory education requirements for advisers

The Stockbrokers and Financial Advisers Association (SAFAA) has welcomed the election promise by the Federal Labor party that if elected, Labor will remove the requirement for financial advisers with over 10 years' experience and a 'good record' to hold a bachelor degree and pass a national exam.

SAFAA CEO Judith Fox said that the proposed change to existing mandatory education requirements is welcome recognition of advisers' professional experience and the commitment of the advice profession continuing professional development. Ms Fox said:

> 'This is good policy, because it recognises experienced stockbrokers and investment advisers who have longstanding relationships with clients over decades, passed the national exam as well as an unblemished record, and their clients should not be disadvantaged because an adviser does not have a degree. Stockbrokers and investment advisers have been undertaking significant CPD for many, many years, so continuous learning is a key aspect of their professional lives.'

[Sources: [registration required] The AFR 09/12/2021; SAFAA media release 09/12/2021]

In Brief | ASIC has provided a summary of the outcomes of the 13 matters referred by the Hayne Commission and the 32 Hayne case studies investigated by ASIC as at 9 December 2021 (the date when the last civil proceeding resulting from these matters was filed)

[Source: ASIC update: Financial Services Royal Commission: Summary of ASIC enforcement action 09/12/2021]

In Brief | APRA has released new FAQs on Prudential Standard APS 210 Liquidity and Reporting Standard 210 Liquidity to clarify the liquidity treatment of certain types of deposits

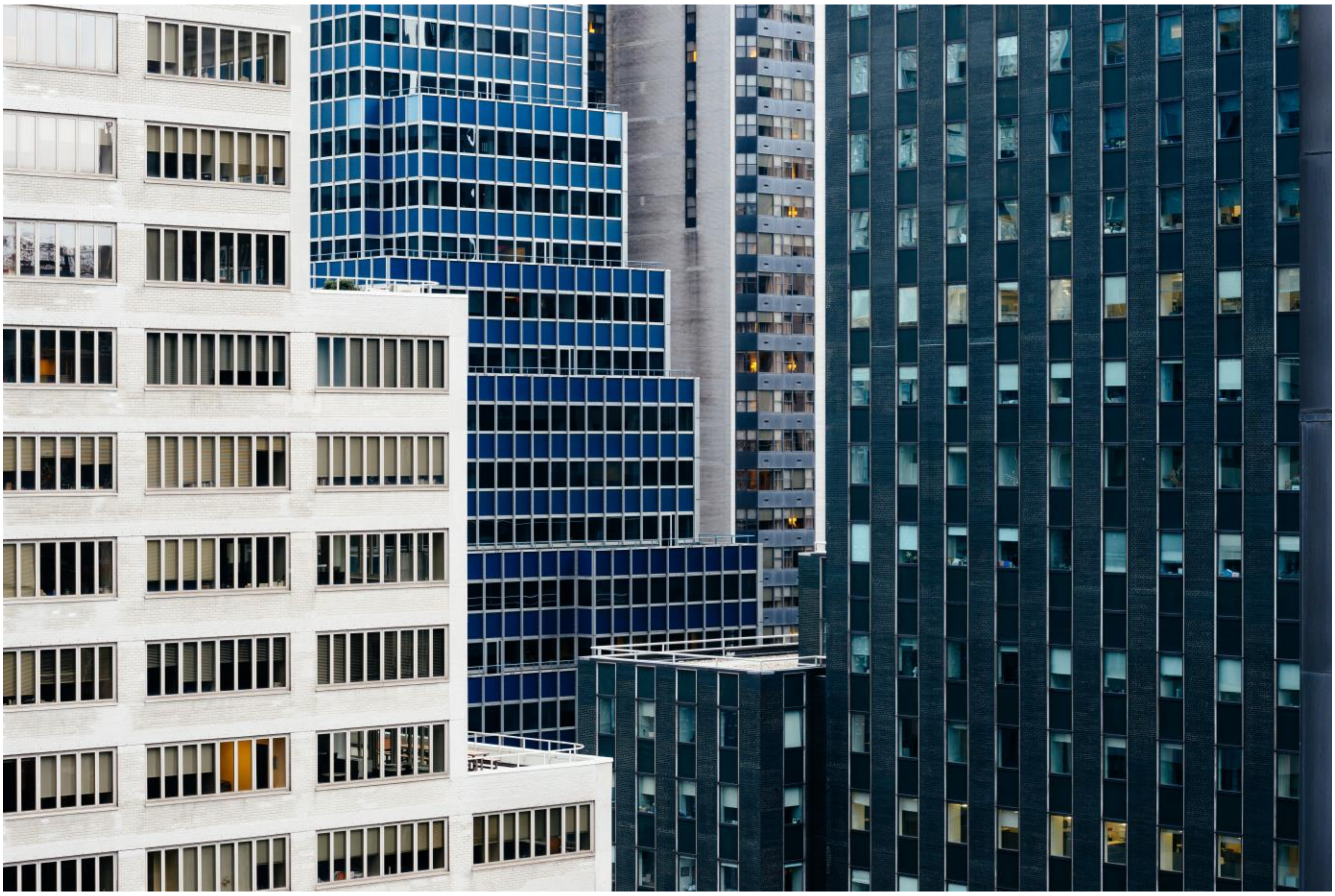
[Sources: APRA media release 09/12/2021; Liquidity Frequently Asked Questions]

In Brief | APRA and ASIC have released notes from the latest Superannuation CEO Roundtable discussion. The discussion touched on data governance/management, APRA's recently released discussion paper Strengthening Financial Resilience in Superannuation and recent court applications made by trustees seeking judgements in relation to charging a fee for remuneration

[Source: APRA media release 14/12/2021]

In Brief | Only 52% of candidates who sat the November FASEA exam passed it. However, FASEA points to the overall high pass rate (91%) as evidence that the exam is 'an achievable exam for competent relevant providers regardless of their area of specialisation'.

[Source: FASEA media release 10/12/2021]



Risk Management

New guide aims to assist financial firms to detect and identify potential emergency and disaster payments fraud

- AUSTRAC, has partnered with Services Australia and the Fintel Alliance on a new guide to assist financial services businesses to 'identify and disrupt individuals and organised crime groups seeking to commit fraud against emergency or disaster relief payments'.
- The guide is primarily focused on assisting firms to recognise potential fraud indicators and on clarifying when firms should submit a suspicious matter report (SMR) to AUSTRAC.
- Some of the indicators of financial transactions being used for potential fraud include (among others): multiple emergency or disaster payments referencing different Centrelink Customer Reference Numbers or separate individual names being paid into the same bank account.
- The guide makes clear that one of the various indicators alone may not be indicative of illegal activity. However, where one or more indicators are observed, financial firms should consider submitting an SMR.

[Sources: AUSTRAC media release 09/12/2021; Full text guide: Financial crime guide – Preventing the Exploitation of Emergency and Disaster Support Payments]

Government backed training program aims to lift directors' digital capabilities

- As part of a broader 'digital business package', the Federal government has launched a new training program, which will be delivered by the Australian Institute of Company Directors (AICD) aimed at lifting the digital literacy of directors.
- This is considered necessary given the very low proportion (3%) of company directors with a digital background and the rapid digitalisation of businesses driven by the pandemic. Both the opportunities for the Australian economy and the increased risk require leaders to be digitally skilled.
- The training comprises 10 online modules that covering topics including: digital investment strategy, digital transformation, and modern competitive business practices.

[Source: Minister for Science and Technology Melissa Price media release 06/12/2021]

In Brief | Analysis from Greenpeace Australia Pacific has found that the Big four banks remain 'significantly exposed to climate risk' through their current fossil fuel lending policies/approach. According to Greenpeace, enabled emissions from the big four banks from 2016-2020 amount to 16.3 billion tonnes which is 33 times Australia's annual domestic emissions.

[Sources: Greenpeace Australia Pacific media release 09/12/2021; Full text 'briefing paper']

In Brief | Planning for the end of coal fired electricity: AEMO's latest draft Industry System Plan (ISP) sets out a proposed 30 year roadmap for the 'optimal development' of the National Electricity Market (NEM) given the earlier than anticipated retirement of coal power stations, which the report flags are closing at a rate of two to three times faster than planned. The due date for submissions on the draft ISP is 11 February 2022.

[Sources: AEMO 2022 Draft ISP Consultation 10/12/2021]

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