Governance News

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

16 June 2021

Contents

Diversity

Unlocking access to skilled workers in Australia: Separate reports suggest that providing access to flexible work could be the answer

CEW report: Tapping into an existing pool of skilled talent requires equal access to flexible working arrangements

- A report from Chief Executive Women (CEW) – Equitable Flexibility: Reshaping our Workforce – identifies equal access to flexible working arrangements as a key mechanism for enabling employers to tap into an existing pool of skilled workers (including skilled women).
- The report makes clear that following the forced 'trial' of flexible work during the COVID-19 pandemic, it is now perceived as a 'business imperative' rather than a 'perk'.
- The report presents this as an opportunity to accelerate gender equality and female workforce participation, and also as an opportunity for companies to attract valuable talent and unlock improved financial and workforce outcomes.
- A key message in the report is the need for access to flexible working arrangements to be available to everyone – for the culture within organisations to support inclusivity. To this end, the report calls for flexible work to be: a) 'practiced at scale' rather than on an ad-hoc basis; b) 'encouraged without preconditions or judgement'; c) adopted at all levels of the company by all genders (including by senior leaders); and e) implemented without adverse consequences attaching to it (eg without impacting career progression opportunities).

CEPAR report: Older workers are a great resource, but employers need to embrace flexibility

- Separately, research from the ARC Centre of Excellence in Population Ageing Research (CEPAR) has identified that the pool of skilled older workers in Australia, primarily women, is increasing and based on current data looks set to continue to do so.
- According to CEPAR's analysis, the proportion of Australia's workforce aged 55+ has more than doubled from 9% in 1991, to 19% in 2021 with workers aged 55 (or over) set to make up around 40% of the adult population by 2050.
- CEPAR Senior Research Fellow at the UNSW Business School Rafal Chomik suggests that this is an opportunity for employers to access skilled and experienced workers – but that doing so will require a shift in approach,.

  'Older people are a critical part of the workforce and economy. More mature workers could increase economic prosperity. Given the right opportunities, older workers could offset the adverse economic impacts of population ageing. If they are to thrive and prosper in the labour market, then Australia – compared to other countries – needs to do better to dismantle remaining barriers related to health, care, training, discrimination, and work conditions, and also to ensure that employers have the right strategies to recruit, deploy, and retain them'.

- A 'customised approach; to flexible work is needed: Professor Marian Baird emphasised the importance of access to flexible working conditions for this age cohort, to enable workers to balance other demands (including carer responsibilities). For example, she noted that over 40% of women aged over 50 who are working part time and 33% of those working full time are involved in some sort of caregiving. She observes that if organisations 'want to take advantage of demographic change, then they need policies and cultures in which employees can access the flexibility they require.'

  [Sources: CEW media release 08/06/2021; Full text report: Equitable Flexibility: Reshaping our Workforce; CEPAR media release 10/06/2021; CEPAR report: Tapping into Australia's ageing workforce: Insights from recent research]

In Brief | Growing support for gender balanced leadership: 10 new ASX listed companies have signed on to the investor led 40:40: 20 Vision Initiative. Signatory companies have committed to achieving gender balance (40% women, 40% men and 20% open) in their executive leadership by 2030. They have also committed to publicly setting interim gender targets for 2023 and 2027, disclosing their plans for meeting these targets and to reporting annually on their progress

[Source: HESTA media release 27/05/2021]

Remuneration

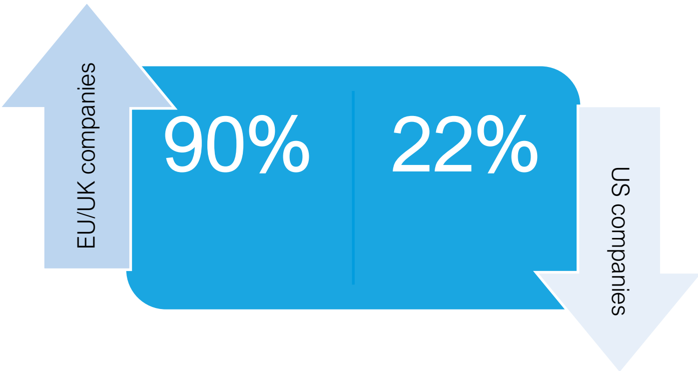
Indications that UK companies are leading the US on tying pay to ESG goals (at least for now)?

- Analysis from Pay Governance indicates (based on a small sample) that US companies appear to be far less likely than their UK or EU counterparts, to include ESG metrics in compensation plans.
- Having said this, Pay Governance considers that based on past trends, it's likely that the US will follow the example of the UK and there will be an uptick in the use of ESG metrics by US firms going forward.

Key Takeaways

Inclusion of ESG metrics: US vs UK/EU companies

- 21 of 95 US companies (22%) surveyed reported that they included ESG metrics in their 2020 compensation plans. Of this 22%, almost every company (95%) opted to include ESG metrics in the annual incentive, with the remaining 5% including them in the long term incentive



- In contrast, 90% of the UK and EU companies included ESG metrics in their compensation plans. Of this group, 89% opted to include ESG metrics in the annual incentive and 41% in the long-term incentive.

Similarities in approach (where ESG metrics are used)

- Pay Governance highlights that, where they are being used 'the types of ESG metrics and plan designs used by both UK/EU and US companies are largely the same'. For example, all companies opting to include ESG metrics tend to:
  - use a combination of quantitative and qualitative metrics: 52% of US companies and 56% of UK/EU companies use a combination
  - favour a scorecard approach over alternatives (such as individual objectives etc) to assess ESG. The scorecard approach was the most common approach for all companies
  - apply relatively 'modest' weightings - when ESG metrics were implemented into the annual and/or long-term incentive plans, the most common weighting given was within the 10%-15% range
- Interestingly, Pay Governance found that both US and UK/EU companies prefer not to use a 'modifier or discretionary adjustment' as a means of determining annual incentive payouts. The strong preference is to use a weighted ESG metric instead. In the context of long term incentive plans, weighted ESG metrics were used in 100% of cases.

What is being measured?

- Social metrics:
  - 100% of EU/UK companies included a 'social' metric vs 84% of US companies.
  - The most common metric in this category across the board was some form of diversity metric (59% of EU/UK companies and 67% of US companies). Pay Governance comments that US companies tended to also include a 'companion' inclusion and belonging metric at a higher rate than EU/UK companies (43% vs 19%).
- Environmental metrics:
  - 89% of EU/UK companies included some form of environmental metric vs 44% of US companies

- The most commonly used environmental metrics used by EU/UK companies were: reduced carbon emissions/greenhouse gas emissions followed by waste reduction.
- For US companies, the most commonly used environmental metric was energy efficiency/renewable energy followed by reduced carbon emissions/greenhouse gas emissions.

- Governance metrics: US companies were more likely than their UK/EU counterparts to include 'governance' metrics (40% of US companies did so vs only 11% of UK/EU companies).

About the research: The research is based on a sample of public filings from 30 companies from the UK's FTSE 100 and EU's STOXX 50 indices through to April 2021 and an earlier survey of US companies conducted in January 2021.

[Source: Pay Governance media release 02/06/2021]

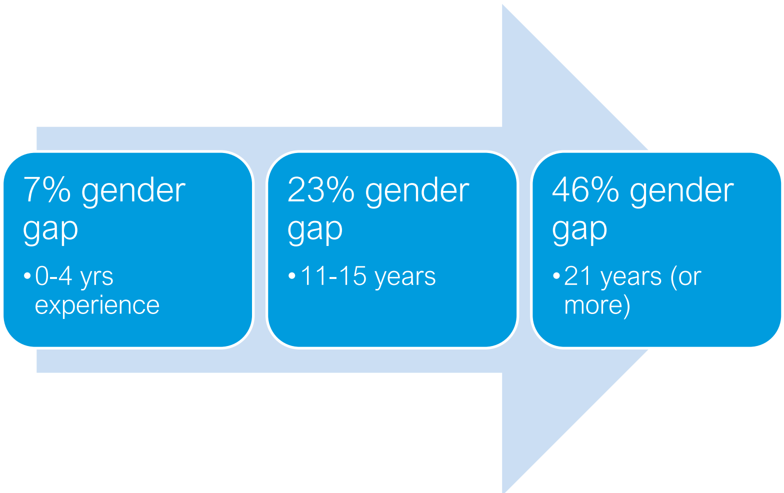
Gender Pay Gap: CA ANZ report identifies that the gender pay gap in accounting widens with seniority

The findings from the latest Chartered Accountants Australia and New Zealand (CA ANZ) Member Remuneration Survey highlights the persistent gender pay gap between men and women in the industry.

The findings are based on a survey of 4517 chartered accountants in Australia new Zealand in March 2021.

Key Takeaways

- Men are paid significantly more than their female colleagues?
  - Overall, according to CA ANZ, the gender pay gap is approximately $50,000 in Australia and $60,000 in New Zealand.
  - According to the report, the gender pay gap widens with seniority: For those who have been in the industry from 0-4 years, the gap is approximately 7%. For those who have been in the industry 16-20 years, the gap broadens to 30%. For those who have been in the industry 21 or more years, the gap is 46%.



- Key reasons for the gap?
  - The two key reasons given by survey respondents for the gap were nominated as: 1) women's carer responsibilities for children and/or the elderly; and 2) over representation of men in senior roles.
  - This perception appears to be supported by the finding that, of the women surveyed who had taken career breaks, most had done so to care for children/others (60% parental leave, 11% carers' leave). 66% of this group believe that the break had some impact on their career.

- Difference in the level of acceptance of the problem? According to CA ANZ though 7 in 10 women believe that there is a gender pay gap in their profession, while only 3 in 10 men agree that this is the case.

- Strong support for acting on the problem: Despite the gendered difference in the level of acceptance of the issue, the report found that there is strong overall support for acting to address it, with 95% of those surveyed agreeing it is important that the CA ANZ tackle the issue (which the CA ANZ has committed to do).

- Key ways to close the gap? Respondents nominated: increased pay transparency (24%); undertaking annual pay gap analysis across the organisation (22%); and analysing performance ratings and performance pay to ensure there is no gender bias (19%) as the top three ways to close the gap.

[Sources: CA ANZ media release 02/06/2021; Full text report: 2021 CA Gender Pay Gap Report]

Shareholder Activism

47% of shareholders back ESG resolution at Caterpillar Inc

- Context: the CA100+ Net-Zero Benchmark, assesses companies on their progress towards net-zero transition. You can find an assessment of the progress being made by individual companies (including Caterpillar Inc) against the benchmark here.
- According to As You Sow, preliminary results indicate that 47% of investors voted in support of a shareholder resolution calling on Caterpillar Inc (a manufacturer of construction and mining equipment) to disclose whether/how the company is aligning its climate policies and performance with the progress indicators laid out in the Climate Action 100+ Net-Zero Company Benchmark.
- Commenting on the result, As You Sow President Danielle Fugere said,

> 'Today's vote underscores shareholder frustration with Caterpillar's inaction on climate…As the economy transitions rapidly toward net-zero emissions, lagging companies like Caterpillar put themselves and their investors at risk. Business as usual is increasingly out of step with the norm, leaving opportunities on the table while increasing the risk of stranded business lines and assets.'

Part of a broader initiative:

- A similar resolution at General Electric received a 98% support, after the company 'proactively' endorsed it.
- As You Sow comments that similar resolutions were both withdrawn earlier this year when United Airlines and Valero separately agreed to undertake actions to align their business plans and reporting with specific benchmark indicators.

[Source: As You Sow media release 09/06/2021]

Institutional Shareholders and Stewardship

Evaluating Say on Climate proposals, Vanguard outlines its approach

Recap: What are 'say on climate' proposals?

- The 'Say On Climate' initiative was launched by activist investor Chris Hohn through the Children's Investment Fund Foundation.
- Modelled on 'say on pay', the initiative calls on companies to afford shareholders the opportunity to provide feedback (through an annual advisory vote) on their transition strategy. You can view a short clip of Chris Hohn explaining the objective/rationale behind the initiative and how it works here.
- According to Vanguard, there is fairly wide variation in the form that 'say on climate' proposals have taken to date, but generally they tend to include the following three requests: a) annual disclosure of greenhouse gas emissions and progress toward achieving stated goals; b) disclosure of the company's strategic plan for reducing future emissions/managing climate-related risks; and c) an annual advisory vote for shareholders on the company's climate plan/report.

Vanguard's approach to evaluating proposals

- Qualified in principle support for advisory votes on material issues:
  - Broadly, Vanguard supports the idea of shareholders having a voice and the ability to challenge a company's approach when 'meaningful gaps in risk oversight mitigation' are identified on 'material governance matters that have the potential to affect long-term shareholder value' eg climate risk.
  - Vanguard considers however, that though a potentially useful mechanism for companies to gain insight into investors' perspective and for shareholders to make their views known, advisory votes 'should not be used to delegate strategic oversight responsibilities to shareholders, nor should they be used in place of meaningful disclosures to and communications with shareholders'.
- Case by case approach:
  - Vanguard make clear that it will not automatically support 'say on climate' proposals. Rather, consistent with its approach to shareholder proposals more generally, it will take a case by case approach to evaluation.
  - Where the proposal is supported by the board – where the company has identified climate change risk as material to its business and is seeking shareholder input on its climate plan – Vanguard states that it will generally vote in support of the proposal.
  - Where the proposal does not have board support, but requests 'disclosure of material climate-related risks and opportunities that aids decision-making, or that addresses a gap in the company's current practices' Vanguard will also consider supporting it..
- Evaluating proposals: Vanguard states that,

  'Our approach to evaluating climate-related proposals is grounded in our fiduciary duty to safeguard and grow our clients' assets. Vanguard expects boards to effectively oversee material climate-related risks, and to disclose those risks using widely recognized investor-oriented reporting frameworks…

  We evaluate Say on Climate proposals through a lens of materiality and consider a wide range of criteria in our analysis, including the reasonableness of the request, whether the proposal addresses a gap in disclosure, and its alignment with industry standards. In addition, we consider regional differences, such as the binding nature of shareholder votes in the UK or amendments to a company's constitution related to shareholder proposals in Australia'.

  [Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 14/06/2021]

457 global investors have called on governments to step up their action on climate change, including incentivising private investment in new technologies

Investors have called on the world's governments to urgently prioritise five climate actions

Investor Agenda has released a statement calling on all governments globally, to accelerate action to address the climate crisis. More particularly, the statement calls on governments ahead of the 26th United Nations Climate Conference of the Parties (COP26) in November, to:

- 'Strengthen' existing Nationally Determined Contributions (NDCs) for 2030 'in line with' limiting warming to 1.5°C
- Commit to achieving net zero emissions by 2050 and outlining a pathway to achieving this. This plan is expected to include setting interim targets and developing 'decarbonisation roadmaps' for each carbon-intensive sector.
- Implement domestic policies to deliver against these targets. These policies are expected to include: incentivising private investment in zero-emissions solutions; removing fossil fuel subsidies; phasing out thermal coal based electricity generation; 'avoiding new carbon intensive infrastructure'; and ensuring that 'just transition' plans are in place for workers and communities.
- Ensure COVID-19 economic recovery plans support the transition to net-zero emissions
- Commit to implementing mandatory climate risk disclosure requirements aligned with the Task Force on Climate-related Financial Disclosures (TCFD) recommendations.

Supporters

- So far 457 investors globally with more than US$41 trillion in assets under management (or 37% of all global assets under management have signed the statement (the full list is here).
- Investor Agenda hopes that this number will increase ahead of COP26.

[Source: Investor Agenda media release 10/06/2021; Full text of the statement including list of signatories]

Led by Ceres, a coalition of investors, companies and not for profits have expressed their strong support for the SEC to mandate climate risk disclosure

A coalition of investors, companies and non-profits - 180 investors with nearly $2.7 trillion in assets under management,155 companies and 58 nonprofit organisations (full list here) – have written to the Securities and Exchange Commission (SEC) as part of the regulator's public comment period for climate disclosure rulemaking, expressing strong support for the SEC to mandate climate risk disclosure.

The statement calls on for new climate disclosure rules to:

- Be based on the TCFD-based recommendations
- Include industry-specific metrics, building on existing standards already commonly in use by investors and companies
- Include governance and strategy disclosure – ie 'provide insights into companies' climate risk exposure, strategies and scenario planning'
- Include requirements to disclose Scope 1, 2 and 3 emissions
- Require material climate disclosures to be included in annual, quarterly and 'other appropriate SEC filings'
- Be updated frequently (including adapting existing metrics/adding new ones) to keep pace with evolving understanding of climate impacts/risks.

Ceres notes that this builds on similar calls for the introduction of mandatory disclosure requirements from investors and individual companies.

Broader context

Ceres also sent its own letter to the SEC (full text here) outlining the importance of SEC rulemaking to improve climate disclosures.

Ceres comments that globally pressure on governments to mandate climate risk disclosure is increasing. For example, one of the demands in the 2021 Global Investor Statement to Governments on the Climate Crisis (briefly summarised in a separate post in this issue of Governance News above) which has been signed by investors representing $41 trillion, calls for all governments to mandate climate risk disclosure as part of a broader commitment to accelerating global climate action.

[Source: Ceres media release 10/06/2021; Letter to SEC]

Investors call on UK supermarket chain to follow its rivals in setting sales based health targets

ShareAction's Healthy Markets investor coalition – seven institutional investors representing $1.1tn - have written to the Chair of publicly listed, UK supermarket company Morrison Supermarkets PLC, ahead of the AGM, calling on the company to do more to increase sales of healthier food/drink products through its stores.

The investors have called on the company to:

- disclose what the proportion of healthier products sold (as a proportion of total food and non-alcoholic drink annual sales by volume)
- disclose a long-term target and a strategy to 'significantly increase' that proportion
- provide updates on progress towards achieving the targets and implementing the strategy in annual reporting from 2022 onwards

In making these demands, ShareAction comments that rival companies Tesco and Sainsburys have already set sales-based health targets in response to investor pressure, in Tesco's case, after a shareholder resolution (coordinated by ShareAction) was filed with the company.

To date, Morrisons has set a target to increase the number of its own-brand products to 65% of all own-brand products by 2025. However, this is considered inadequate.

ShareAction Senior Manager Ignacio Vazquez commented:

> 'Investors want to better understand how supermarkets are taking responsibility for their enormous influence on public health. This means targeting greater sales of healthier products – not just the number of products – and applying these targets to all products, not just their own-brand ranges.'
>
> [Sources: ShareAction media release 10/06/2021; Investor letter]

Disclosure and Reporting

Committee hears opposing views on the need for changes to continuous disclosure obligations

Context: Bill proposes to permanently relax existing requirements

- Schedule 2 of Treasury Laws Amendment (2021 Measures No. 1) proposes to make permanent the temporary COVID-19 changes to continuous disclosure laws intended to insulate directors from opportunistic class actions. You can find our brief summary of the proposed changes in the Bill here and a brief status update on the Bill here.
- The Bill passed the House on 17 March 2021, but has so far failed to pass the Senate notwithstanding the Economics Reference Committee's recommendation that the Bill be passed without amendment. The Senate subsequently agreed to refer to Bill back to the Committee for inquiry and report by 30 June 2021 to allow more time for submissions. Senate debate on the Bill has been adjourned until the first sitting day in August 2021.
- Public hearings on the Bill were held on the 9-10 June 2021.

The Committee has heard opposing views on the need for the proposed changes to continuous disclosure obligations

- Appearing before the Senate Economics Reference Committee on 9 June 2021 (transcript here), Australian Council of Superannuation Investors (ACSI) Executive Manager Public Policy and Advocacy Kate Griffiths outlined ACSI's concerns around the proposed changes in Schedule 2 of the Bill. Ms Griffiths commented,

  > 'Continuous disclosure is a fundamental tenet of our market, so we do have concerns about watering down the standard to which companies are held. A fair, stable and transparent market has been achieved under our existing laws for many years…It's not overly burdensome for an ASX-listed company to establish appropriate disclosure systems, and companies have ample guidance from ASIC and from the ASX on how to manage their disclosure responsibilities.

> We are concerned that proposed changes in Schedule 2 of the Bill will operate to undermine the integrity of the market. With a weaker test, the availability of information to the market is likely to deteriorate. Entities will be liable only where they are reckless or negligent, which sets the bar low for corporate behaviour. It's inevitable that when accountability is lowered, focus will go elsewhere…
>
> Given the important role of investment in the Australian market, and particularly as part of any economic recovery, a clear, objective standard is more appropriate to ensure that the market is kept informed of material information that is known to a company.'

- Ms Griffiths also considers that there is no definitive evidence tying increases in directors and officers insurance premiums to shareholder class actions (which was a key justification put forward by the government for the proposed changes). Ms Griffiths commented,

  > 'I think it's clear that the statistics are really uncertain. Australia's not unique in terms of the tightening of the market for directors and officers insurance. I think there are some international statistics that suggest there are similar constraints globally and that some of those constraints really can be attributed to issues other than specifically related to disclosure: uncertainty, re-pricing, non-class action litigation, operational risks. It is certainly not something that's limited to Australia'.

- Ms Griffiths added that this view is supported by the findings of the Law Reform Commission which found that 'there was a lack of evidence to establish the causes of increased D&O premiums'.
- According to media reports (The SMH, and The AFR) appearing before the Committee on 10 June 2021, the Australian Securities and Investments Commission (ASIC) also raised concerns about the proposed relaxation of continuous disclosure laws and the potential impact of this.
- These views were not universally shared. For example the Director of Group of 100 (G100) Andrew Porter expressed the view that business groups including G100 had been sufficiently consulted on the proposed continuous disclosure changes and that they strike the right balance. Mr Porter commented

  > 'with the proposed amendments, shareholders absolutely still have remedies to hold directors, officers and companies to account for reckless or negligent behaviour. As I said, I think the proposed amendments make that legislation clearer and more efficient'.

[Sources: Treasury Laws Amendment (2021 Measures No. 1) Bill 2021; Law Council of Australia media release 18/03/2021; Shadow Assistant Treasurer Stephen Jones media release 17/03/2021; ASIC media release 23/03/2021; Transcript: Senate Economics Reference Committee on 9 June 2021; The SMH 09/06/2021; [registration required] The AFR 10/06/2021]

Continuous disclosure: ASIC commences proceedings against shipbuilding company and its former CEO

The Australian Securities and Investments Commission has commenced proceedings in the Federal Court against a shipbuilding company and its former CEO for alleged breaches of continuous disclosure obligations.

Broadly, the proceedings concern the alleged failure of the company to 'immediately disclose' a material change in its prior earnings guidance, to the market. More particularly ASIC alleges that:

- the company had represented that it expected its US shipbuilding business would be profitable in FY2016, but subsequently became aware (from 4 June 2016) that it would instead likely generate a significant loss.
- ASIC alleges that the company did not communicate that a writeback of at least US$90m was likely required, and that this would generate a significant loss, until a month later: 4 July 2016.
- ASIC alleges that the one month delay in disclosing this information was in breach of the company's continuous disclosure obligations under s674(2) of the Corporations Act 2001 (Cth) (the Act). ASIC also alleges that the company breached s1041H(1) of the Act and/or s12DA of the Australian Securities and Investments Commission Act (2001) (Cth) by failing to correct or withdraw its previous guidance.
- ASIC further alleges that the former CEO of the company at the time of the alleged misconduct contravened sections 180(1) and 674(2A) of the Act for his involvement in the company's (alleged) continuous disclosure contravention and by failing to exercise reasonable care and diligence as a director.

ASIC is seeking declarations and pecuniary penalties from the Federal Court.

[Sources: ASIC media release 10/06/2021]

Financial Services

Top Story | FFSP transitional relief extended

ASIC has announced it has extended, for 12 months (until 31 March 2023), the transitional relief for foreign financial service providers (FFSPs) from the need to hold an Australian financial services (AFS) licence, pending the outcome of the Australian Government's consultation about the regulation of FFSPs.

This follows on from the Australian Government's announcement on 11 May 2021 that it would consult on options to restore previously well-established regulatory relief for FFSPs dealing with wholesale clients in Australia.

While we welcome ASIC's announcement, it is unfortunate that the 'sufficient equivalence' relief has not been re-opened to new FFSPs whom have never relied on that regime previously. This will mean those FFSPs who cannot rely on the 'sufficient equivalence' relief (i.e. because they are not currently relying on it) may have to apply for a standard or foreign AFS licence should they wish to commence business in Australia prior to the finalisation of Treasury's consultation process and the commencement of the new changes to the FFSP regulatory regime.

Further details about ASIC's announcement and the extension is below.

The instrument

ASIC Corporations (Amendment) Instrument 2021/510 has been made to give effect to the extension of the transitional period. Specifically, it amends the following ASIC instruments (which contain the existing 'sufficient equivalence/passporting' relief, the 'limited connection' relief and the 'CSSF-regulated FFSP' relief) to insert the 31 March 2023 end-date:

- ASIC Corporations (Repeal and Transitional) Instrument 2016/396;
- ASIC Corporations (CSSF-Regulated Financial Services Providers) Instrument 2016/1109; and
- ASIC Corporations (Foreign Financial Service Providers – Limited Connection) Instrument 2017/182.

This means that FFSPs who currently rely on, or wish to rely on, the 'limited connection relief' to provide financial services to wholesale clients in Australia can continue to do so until 31 March 2023.

Similarly, this extension allows FFSPs that are currently relying on the 'sufficient equivalence' relief to continue relying on that relief to service Australian wholesale clients until 31 March 2023. However, unlike the 'limited connection', the 'sufficient equivalence' relief is not able to be relied upon by a FFSP that is not already currently relying on that relief.

Funds management relief delayed

The ASIC Corporations (Amendment) Instrument 2021/510 also delays the commencement of the ASIC Corporations (Foreign Financial Service Providers – Funds Management Financial Services) Instrument 2020/199 until 1 April 2023. That instrument was created to give licensing relief to FFSPs that provide 'funds management financial services' to certain categories of Australian professional investors. You can find more information about the funds management relief here.

Existing and new FFSP licence applications

ASIC has also announced:

- they will pause their assessment of licence applications lodged by FFSPs unless they are specifically requested to proceed by the applicant; and
- during the extended transitional period, ASIC will consider new applications for individual temporary licensing relief or new standard or foreign AFS license applications if the applicant cannot rely on the extended transitional relief.

ASIC has stated that FFSPs who have been or are granted a foreign AFS licence will be able to continue to operate under the licence issued by ASIC pending any changes arising from the Government's consultation.

We will be sure to provide any further details about this regulatory change, including analysis on the proposals put forward by Treasury for consultation, when they come to hand.

[Sources: ASIC Corporations (Amendment) Instrument 2021/510; ASIC media release 11/06/2021]

COVID-19: ASIC's five key focus areas for financial reporting

The Australian Securities and Investments Commission (ASIC) has provided guidance on its focus areas for financial reporting for the year ending 30 June 2020 in light of the COVID-19 pandemic.

Investors need to be kept informed

Consistent with last year, ASIC emphasised the importance of keeping investors informed. ASIC Commissioner Cathie Armour said

> 'As COVID-19 conditions continue to evolve, the quality of financial reports and related disclosures remain more important than ever for keeping investors informed. The circumstances of companies and the environment in which they operate can change significantly from one reporting period to the next. This could significantly affect assessments of asset values and financial position. Disclosing key assumptions, risks, the drivers of results, management strategies and future prospects will be important for investors and other users of financial reports. This includes both full-year and half-year reports.'

ASIC states that despite uncertainties connected with the pandemic, its expectation is that the 'assumptions underlying estimates and assessments' in financial reports are 'reasonable and supportable' and 'realistic and not overly optimistic or pessimistic'.

'Useful and meaningful disclosures about the business impacts and potential uncertainties will be vital. Uncertainties may lead to a wider range of valid judgements on asset values and other estimates…Disclosures in the financial report about uncertainties, key assumptions and sensitivity analysis will be important to investors' ASIC states.

Five key areas of focus

Consistent with last year, ASIC suggests that directors, preparers and auditors should focus on the following five areas:

- Asset values (relevant matters for consideration may include for example: impairment of non-financial assets, values of property assets, expected credit losses on loans and receivables)

- Provisions (ASIC suggests that consideration should be given to the need for provisions for matters including: onerous contracts, financial guarantees given and restructuring)
- Solvency and going concern assessments
- Subsequent events: ASIC suggests that directors, preparers and auditors should review events/information received after year end but before the completion of the final report, to determine whether they affect assets, liabilities, income or expenses at year-end.
- Disclosures in the financial report and Operating and Financial Review (OFR):

- Generally, ASIC considers that the financial report should 'disclose uncertainties, changing key assumptions and sensitivities' to assist investors in understanding 'the approach taken, understanding potential future impacts and making comparisons between entities'. ASIC expects entities to explain 'where uncertainties have narrowed or changed since the previous full-year and half-year financial reports'.
- Disclosures in the OFR: ASIC considers that the OFR 'should complement the financial report and tell the story of how the entity's businesses are impacted by the COVID-19 pandemic and changing circumstances'. In addition, ASIC considers that factors not attributable to the COVID-19 pandemic should be included and 'given appropriate prominence'.
- ASIC highlights climate change risk as a factor that 'could have a material impact on the future prospects of entities. Directors may also consider whether to disclose information that would be relevant under the recommendations of the Task Force on Climate-related Financial Disclosures'.
- Likewise ASIC considers that entities should account for any assistance and support (eg JobKeeper, rent deferrals) with any 'material significant amounts' disclosed 'prominently) in both the OFR and the financial report. In addition, ASIC considers that entities should also disclose the amount of any material voluntary returns of JobKeeper or other support or assistance.

Further to these issues, ASIC suggests that directors, preparers and auditors may find it helpful to refer to the guidance on financial reports and audits in the context of COVID-19 in the frequently asked questions sections of the ASIC website here.

Scope of ASIC's review

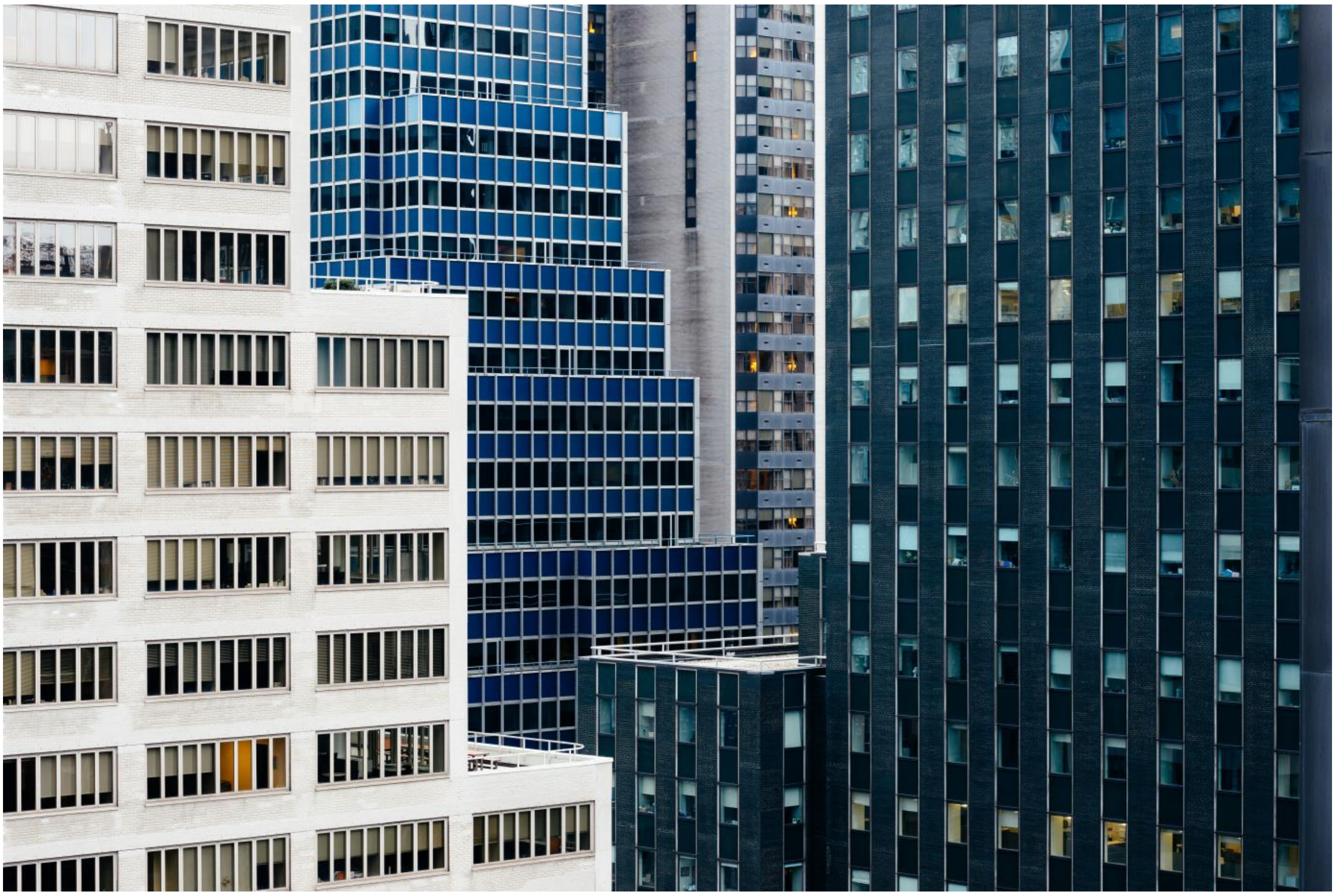
ASIC plans to review the full year financial reports of about 200 larger listed entities and other public interest entities focusing on those adversely affected by the current conditions as well as the adequacy of disclosure by those whose businesses have been positively affected.

[Source: ASIC media release 10/06/2021]

ASIC's review of 31 December 2020 financial reports flags the need for directors and auditors to focus on impairment of non-financial assets

- ASIC made inquiries of 15 entities on 22 matters.
- Matters involving two of the entities have been concluded without any changes to their financial reporting. Inquiries of the remaining 13 entities are continuing.
- Impairment and other asset values:
  - 45% of ASIC's inquiries (10 of 22) related to impairment and other asset values. ASIC highlights the issue of some entities making 'unrealistic and unsupportable assumptions about future cash flows' and the failure by entities to disclose key assumptions (eg discount rates and growth rates and for fair values, the 'valuation techniques and inputs used') as key issues.
  - ASIC has called on directors and auditors to 'focus on impairment of non-financial assets, particularly as businesses navigate through the continuing impacts of the COVID-19 pandemic'.
- The next largest number of inquiries (3 inquiries) related to the quality of entities' operating and financial review (OFR), and 'the extent to which it complemented the financial report and told the story of how the entity's business is impacted by the COVID-19 pandemic'.
- Other areas about which ASIC made inquiries were:
  - consolidation accounting (accounting for controlled entities and joint arrangements): 2 inquiries
  - lease accounting under the standard that first applied for years commencing on or after 1 January 2019: 2 inquiries
  - 'other matters': 2 inquiries
  - off balance sheet arrangements: 1 inquiry
  - revenue recognition: 1 inquiry
  - provisions (1 inquiry)
- Material adjustments: Since the last release of ASIC findings on 17 December 2020, ASIC have made public announcements about two entities. The total negative adjustments to profit was $53.5 million for one entity and $32.4 million for the other.

[Source: ASIC media release 16/06/2021]



Hayne recommendation 2.1: Temporary relief from new fee disclosure reporting obligations for financial advisers

Minister for superannuation, financial services and the digital economy Jane Hume has announced that the government intends to make regulations providing temporary relief for financial advisers from new fee disclosure obligations.

Details

- New disclosure requirements: From 1 July 2021 financial advisers will be required to report the fees paid under ongoing fee arrangements and provide a reasonable estimate of the fees that will be paid for the next 12 month period. Financial advisers can issue this fee disclosure statement any time between 1 July 2021 and 30 June 2022 with this date then becoming the date for all future fee disclosure statements.
- Transitional arrangements: To assist industry with the transition to the new arrangements, the government intends to make regulations enabling financial advisers to report an estimate of fees for the 60 days prior to the statement being issued (alongside the actual fees charged for the remainder of the previous 12 months), during the transition period of 1 July 2021 to 30 June 2022.
- Temporary relief only: The relief will only apply for the transition period. After this expires, financial advisers will have 60 days from the original date on which they issue their fee disclosure statement, to issue their fee disclosure statements which will need to report all fees paid in the previous 12 months.
- New regulations? Ms Hume has said that the new regulations will be made by 1 July 2021.

[Source: Senator Jane Hume media release 11/06/2021]

Hayne implementation: ASIC has issued a new information sheet on ongoing fee arrangements and separately has updated RG 175

Context

- Financial Sector Reform (Hayne Royal Commission Response No 2) Act 2021 implements the government's response to three Hayne Commission recommendations: 2.1 (annual renewal and payment); 2.2 (disclosure of lack of independence); and 3.3 (limits on deducting fees from Choice accounts).
- New annual renewal and payment disclosure obligations: Among other things, Financial Sector Reform (Hayne Royal Commission Response No 2) Act 2021 introduces two new obligations where there is an ongoing fee arrangement:
  - a new obligation to seek to renew an ongoing fee arrangement annually
  - a requirement to obtain a client's written consent to deduct ongoing fees
- Disclosure of lack of independence: ASIC Corporations (Disclosure of Lack of Independence) Instrument 2021/125 sets out the requirements for the Lack of Independence Disclosure that must be included in a financial services guide by providing entities.
- These new obligations apply from 1 July 2021.

INFO 256 Ongoing fee arrangements

Information sheet 256 (INFO 256) provides answers to frequently asked questions around the provision of personal advice to retail clients under an ongoing fee arrangement.

Broadly, the information sheet provides guidance on: a) ongoing fee arrangements (Questions 1–13); b) fee disclosure statements (Questions 14–23), and c) ongoing fee consents (Questions 24–35).

INFO 256 will replace Regulatory Guide 245 Fee disclosure statements, which will be withdrawn.

Transitional relief?

- On 11 June 2021, the government announced that a new regulation will be made to assist advisers with meeting their existing obligation to provide a fee disclosure statement during the transition year (this is covered in a separate post above).
- ASIC states that it will update INFO 256 to reflect the new regulation after it is made.
- ASIC also plans to amend other regulatory guidance to reflect the new obligations, including: Regulatory Guide 182 Dollar Disclosure (RG 182) and Information sheet 228 Limited AFS Licensees – Advice conduct and disclosure obligations (INFO 228).

Lack of independence: Consequential amendments to Regulatory Guide 175 Licensing: Financial Product Advisers-Conduct and Disclosure (RG 175)

ASIC has also amended Regulatory Guide 175 Licensing: Financial Product Advisers-Conduct and Disclosure (RG 175) to include an example of a lack of independence disclosure statement to support advisers in meeting the requirements in ASIC Corporations (Disclosure of Lack of Independence) Instrument 2021/125.

[Sources: ASIC media release 15/06/2021; ASIC information sheet 256 (INFO 256)]

Elder financial abuse: ABA calls for awareness of the issue, says banks stand ready to assist customers

The Australian Banking Association has marked Elder Abuse Day by calling for increased awareness of the issue and outlining the steps Australian banks have taken to address it. These include: rolling out specialised training to help bank staff recognise the warning signs and provide appropriate support to customers; referring customers to specialised support teams within banks and/or to external support providers (eg financial counsellors); taking active steps to identify suspicious transactions; and reporting suspected abuse.

The ABA has called on customers who feel they are 'being coerced or taken advantage of financially' to contact their bank to avail themselves of the support available.

[Source: ABA media release 15/06/2021]

In Brief | The Financial Services Council and the Australian Financial Complaints Authority have jointly appointed Jan McClelland (current Deputy Chancellor of the University of New England) as Chair of the Life Code Compliance Committee, the independent body responsible for overseeing compliance with the FSC Life Insurance Code of Practice

[Source: Joint FSC AFCA media release 08/06/2021]

In Brief | APRA's test environment for the new data collection solution, APRA Connect will be available from 17 June 2021 to give users an opportunity to become familiar with it before they need to submit data in the APRA Connect production environment from 13 September 2021

[Source: APRA Connect Test Environment]

In Brief | Rethinking BNPL regulation in the UK context: University of Leeds academic argues that to effectively protect BNPL consumers, regulation of BNPL providers needs to be tailored to the 'unique nature of these lenders, their service and the risks'. It's argued that effective regulation should include a duty to inform consumers of the 'psychological biases' the services 'take advantage of' coupled with 'a new professional body dedicated to overseeing this form of lending'

[Source: The Conversation 14/06/2021]

In Brief | Australian Consumer group cautions that use of BNPL services appears to be on the rise, especially among vulnerable consumers who are accessing the services to 'make ends meet' following the withdrawal of COVID-19 support measures. CHOICE has said it intends to 'further examine the industry code of conduct and consumer group's calls for further regulation' of BNPL providers

[Source: CHOICE media release 15/06/2021]

Risk Management

Top Story | What does it take to ensure a respectful working environment? Insights from an expert panel

Key Takeouts

- An expert panel, convened by the Governance Institute, recently discussed the practical challenges facing organisations in addressing the issue of workplace sexual harassment
- One key takeaway from the discussion is the need for organisations to move away from a 'compliance mindset' to the issue
- Another is that building a respectful workplace should involve having regular conversations around what exactly a respectful workplace looks like, setting reasonable and shared expectations of behaviour, and then enforcing those standards consistently across the organisation.
- Building and maintaining an inclusive, respectful culture, and the role of the board in overseeing and monitoring this was also a theme.

Taking as their starting point the findings and recommendations in the Australian Human Rights Commission's landmark Respect@Work report, the government's response to the report and recent events, an expert panel (Evelyn Pollard, Theo Kapodistrias, David Dilger, Ross Springolo and Tania Sargeant) discussed the challenges for individual organisations, for boards and for management in tackling workplace sexual harassment.

A high level overview of some of the key themes to emerge from the discussion is below.

A proactive approach

The panel spoke at length about the source of employers' existing legal obligations to provide a respectful, safe working environment and the extent to which this already includes ensuring an environment that is free of sexual harassment.

There was discussion around the need for organisations to review their current approach to the issue in light of the strong focus in the Respect@Work report (report) on the need for employers to shift from a reactive/defensive approach, to a proactive one focused on prevention, and in light of the evolving interpretation of existing obligations. The panel also observed that though there is currently no positive legal duty on employers to prevent harassment per se, the report recommends that this should change (recommendation 17) and that this is something employers should be aware of.

In light of this, it was suggested that it would be prudent for organisations to ensure that they are able to demonstrate (if called upon to do so) what active steps they have implemented to ensure a safe working environment. From a practical perspective it was suggested that this could include: a) having easily accessible, clear and detailed policies in place around identification and reporting of unacceptable behaviour; b) having in place clear complaints handling and investigation mechanisms/policies; and c) providing an effective induction and ongoing training program.

Should conduct be a new risk category?

Asked to comment on whether there is a new risk category around conduct, Theo Kapodistrias said that there isn't but that perhaps this is something that would be helpful/should be considered, given the importance of managing the risk.

A trigger for action

Evelyn Pollard observed that the response from organisations to the report has so far been mixed. She said that there has been a shift, in some organisations, to a more proactive stance on the issue. For example, she has observed that there has been an increased focus (in some cases) on ensuing detailed, formal policies/procedures are in place as well as a renewed emphasis on rolling out tailored, organisation-specific training programs.

However, in other organisations there continues to be resistance to the idea, and the finding in the report, that the issue is widespread in Australian workplaces. Boards and management (in some organisations) continue to assume that the findings do not apply to them/that the issue does not exist within their workplace.

There was also discussion around the importance of basing an assessment of whether action is needed (and what action might be appropriate) on data, rather than on assumptions. It was suggested that the report could potentially act as a trigger for this assessment - that is, as a starting point, organisations could check whether the issues identified in the report are present and plan their actions accordingly.

'Clear is kind': The challenge of setting explicit standards of expected behaviour

David Dilger said that from a practical perspective, one of the key challenges for organisations in terms of ensuring a safe working environment, is first determining and then communicating to everyone within the organisation, what the accepted standards of behaviour are. For example, it was suggested that the wording used in some policies eg simply stating 'don't use inappropriate language' is, in practice, not helpful because it does nothing to explain what acceptable or unacceptable language or behaviour look like. This approach leaves room for genuine misunderstandings across genders, generations and roles around what is or is not acceptable.

Quoting Brene Brown, Mr Dilger observed that, especially in this context, being 'clear is kind'. He suggested that having open, facilitated discussions on a semi-regular basis on this issue could be a powerful tool for organisations to determine what acceptable behaviour within their specific workplace looks like – noting that what will be acceptable will vary across workplaces and will change over time.

The importance of being explicit and specific in this context was emphasised. In order to be effective, he said that there needs to be shared understanding that certain behaviours that may have been perceived as 'harmless' by some within the organisation, and that may have been tolerated/accepted in the past, are no longer acceptable.

The inclusion of specific rules backed by examples of acceptable and unacceptable behaviour, can be helpful in setting this expectation, in building consensus/buy in and also useful from an organisational perspective, in evidencing what the acceptable standard of behaviour is within the organisation (should it be necessary to do so).

Asked to comment on how organisations could deal with the challenge of employees who may be are unaware that their comments/behaviour are offensive and/or who are of low emotional intelligence, the panel underlined the importance of effective training on the issue and the importance of leaders taking active and early steps to address instances of unacceptable behaviour as they arise.

Calling out unacceptable behaviour and having 'awkward conversations'

Another theme of the discussion was responsibility for calling out and addressing behaviour as/when it occurs.

There was consensus on the importance of acting early to address poor behaviour to prevent escalation/reinforce acceptable standards. For example, there was agreement that should a leader within the organisation observe an inappropriate joke, or should an instance of this be reported to them, that the leader should feel able to initiate (in a timely manner) a private conversation with the person to explain why the behaviour was unacceptable. Though the panellists acknowledged that this could be 'awkward', it was emphasised that intervening early in this way is far preferable to potentially having to deal with a formal complaint should the behaviour be repeated/go unchecked.

There was agreement that the same standards should apply at all levels of the organisation – including at board level/senior management level. In the board context, it was agreed that the Chair has primary responsibility for enforcing acceptable behavioural standards. Where the Chair's behaviour is in question, responsibility would fall to the next most senior board member.

Where a formal complaint is raised, Ms Pollard emphasised the importance of leaders listening to the complainant and taking time to understand what they would like to see happen. In some instances she said leaders tend to immediately 'jump in' without first taking this step. For example, they might immediately put forward a solution and/or negate that there is a problem to be dealt with, and/or immediately look for evidence. The first response, before initiating any action she said needs to be listening in a way that makes the complainant feel safe.

There was also discussion around the importance of having a straightforward and readily accessible complaints handling process in place.

The role of the board

As with any form of risk, the panel agreed that the board needs to play a pivotal role in ensuring that the issue is being monitored and managed effectively. From a cultural perspective, it was agreed that the board needs to set the tone from the top and model the desired behaviour.

From a practical standpoint, Ross Springolo observed that though boards cannot know every aspect of the organisation, they do have statutory duties they are bound to fulfil including ensuring that appropriate policies/procedures, training and complaints handling and reporting mechanisms are in place and taking active steps to satisfy themselves of their effectiveness.

Mr Springolo also underlined the need for boards to look on the issue as something that needs constant and active monitoring. This could include, for example, boards sitting through the same induction provided to new employees (and possibly the ongoing training) provided to employees on the issue, to ensure that they have an understanding of what standards are being communicated and that this accords with the desired organisational standard/the standard they as leaders are expected to model. This is also important, it was suggested, from the perspective of ensuring consistency in approach to the issue.

It was also suggested that boards could review complaints data and/or review existing policies and procedures for clarity and comprehensiveness and ask questions should there be any concerns and/or opt to commission an external assessment of the organisation's approach to the issue – eg a review of policies/procedures/training materials etc – to aid in this assessment.

Buy-in across the organisation

Though there was consensus that the board has a crucial role in this context, it was also agreed that setting and maintaining strong workplace culture is impossible without buy-in from all levels of the organisation. Having authentic and regular facilitated discussions about acceptable vs unacceptable standards, ensuring training keeps pace with these conversations and providing training on a regular basis across all levels of the organisation were seen as important in this context.

Likewise, consistency in applying agreed standards of behaviour was emphasised. That is, what is acceptable 'on the shop floor' needs to be consistent with what is acceptable in the boardroom.

The need for ongoing monitoring, training, adjustments and reinforcement

The panel underlined the need for organisations' approach to sexual harassment to continually evolve with changing internal and external expectations and legal requirements. It was made clear that training on the issue should not end with induction and that a 'tick box', compliance based approach to training is insufficient.

Rather, the panellists agreed that training should be provided on a semi-regular basis and possibly take the form of regular facilitated discussions on acceptable vs unacceptable standards (documented after the fact and reflected in updated policies, procedures and training).

Mr Dilger also observed that organisations need to accept the shift in the conversation away from compliance. The expectation among employees, and what staff value, is a conversation and commitment to defining what a respectful workplace looks like, setting reasonable, shared expectations of behaviour (backed by examples) around that, and enforcing those standards.

Putting in place the right incentives – no one size fits all approach

Asked to comment on whether there are specific key performance indicators that could/should be used to support strong culture, Ms Pollard said that there is not one-size-fits all approach. Rather, when looking at setting KPIs organisations need to focus on and clearly identify what they are trying to achieve/trying to change and design a response accordingly.

Measuring culture/identifying issues?

Asked to comment on whether there are ways to improve the effectiveness of employee surveys the panel suggested that the following could assist: a) ensuring that workers 'see the point' of answering surveys (making sure that follow up actions/progress are communicated); b) keeping survey questions brief and targeted; and c) ensuring the anonymity of responses.

[Source: This article is based on notes from the Governance Institute panel discussion: VIRTUAL Red Flag Briefing: Respect, Behaviour & Governance 10/06/2021]

Cybersecurity, Technology and Privacy

A suggested starting place for directors: Global experts suggests six core cyber-risk governance principles

The World Economic Forum, National Association of Corporate Directors (NACD), Internet Security Alliance (ISA) and a working group of industry professionals, supported by project adviser PwC, have jointly published six 'consensus principles' and accompanying guidance which is intended to assist directors in exercising their oversight function in the context of cyber risk.

The principles are based on a combination, and reworking of NACD/ISA 2020 guidance and the World Economic Forum's 2017 guidance with input from the working group.

The six principles

The table below provides a brief overview of the principles.

1. Cybersecurity is a strategic business enabler (not just an IT issue)

- The commentary under this principle emphasises the importance of board acceptance of cybersecurity as contributing to 'both value preservation and new opportunities to create value for the enterprise and larger society'.
- it's suggested that effective management of cyber risk requires a 'culture of cybersecurity' with 'leadership commitment to, and modelling of, good cybersecurity decision-making'.

The key suggested action under this principle is that boards integrate consideration of cyber risk into key operational and strategic decision making and analyse cybersecurity risks in the broader organisational context.

Practical steps to aid in this could include:

- adding cyber risk as a recurring board agenda item
- allocating primary responsibility for oversight of cyber-risk issues to a board committee
- requesting that executives identify opportunities to use cybersecurity as a market differentiator/business driver

2. Understand the economic drivers and impact of cyber risk

- The commentary emphasises the importance of boards taking steps to ensure that they are making informed decisions around digital transformation. The authors advocate utilising scenario planning to assist in this.
- It's also suggested that leaders should measure cyber risk 'empirically and economically against strategic objectives, regulatory and statutory requirements, business outcomes and cost of acceptance, mitigation or transfer'.
- Suggested actions include the need for boards to 'review and approve the organisation's cyber-risk appetite…in the context of the company's risk profile and strategic goals'. This could include (among other actions) taking steps to ensure that management has for example:
  - 'defined cyber risk appetite levels in financial terms and developed key metrics to measure overall cyber risk management performance'
  - implemented a 'program that seeks to identify cyber-risk scenarios that align with the organisation's risk profile and establish a risk appetite'
  - provided detailed rationales for the organisation's determination of materiality of risk

3. Align cyber-risk management with business needs

- The commentary states that 'effective governance of any enterprise requires clear alignment between cyber-risk management and business objectives across every facet of decision-making, including mergers and acquisitions, business transformation, innovation, digitalisation, pricing, product development, market expansion etc'.
- It's suggested that to ensure alignment boards should consider taking steps to 'critically review the organisation's business strategy and drivers (eg digital growth) in the context of their cyber-risk implications'.
- This could include (among other things) requiring the C suite to report on:
  - the cybersecurity implications of their activities, including relevant cyber risks, risk ownership and alignment to the enterprise risk-management program
  - integrate cyber-risk analysis into significant business decisions (together with 'effective assurances of the information's quality and comprehensiveness')
- Other suggested actions include requesting that management provide 'roadmaps' explaining 'how the company makes determinations of risk materiality that inform regulatory obligations'

4. Ensure organisational design supports cybersecurity

- The governance structure within the organisation should support cybersecurity. An important aspect of this is accountability. Organisations need to ensure there are clear lines of accountability and ownership, backed up by key performance indicators around risk management/reporting responsibilities for key internal stakeholders.

Suggested actions for boards under this principle include:

- Supporting 'a cybersecurity culture' and encouraging collaboration between the cyber security function and all stakeholders with cyber risk responsibility (across the organisation)
- Reviewing the organisational structure to ensure that the cybersecurity function is 'adequately represented across the business, internal groups and leadership'
- Understanding the basis for the assignment of important roles and lines of accountability for cyber strategy policy and execution (and challenging this as appropriate)
- Ensuring an accountable officer has the authority and responsibility to 'coordinate cyber-risk strategy throughout the organisation and that the organisation has a comprehensive plan for data governance
- Ensuring there is sufficient resourcing (financial/staff) of cyber risk functions

5. Incorporate cybersecurity expertise into board governance

- The commentary emphasises the need, in light of the rapidly evolving environment, for directors 'continually seek to expand their own knowledge' of cybersecurity. The commentary also suggests that directors should make use of available expertise to supplement their oversight of the issue: eg utilise external industry and other guidance, draw on the cybersecurity expertise of other directors, third parties and internal resources.

Suggested actions under this principle include:

- building relationships with internal stakeholders with cyber expertise
- organising for the board to be regularly updated on recent cyber incidents, trends and vulnerabilities
- using third-party advisers to provide regular reports to the board on the effectiveness of management oversight
- considering undertaking periodic audits, reviews of cybersecurity strength and benchmarking by independent third parties

6. Encourage systemic resilience and collaboration

- The commentary states that given the 'highly interconnected nature' of organisations, cybersecurity issues will often have a broad impact and that in light of this, building cyber resilience demands collective action. This requires that organisation collaborate 'across their industry and with public and private stakeholders to ensure that each entity supports the overall resilience of the interconnected whole'.

Suggested actions under this principle include:

- That boards:
  - develop broader, '360-degree view' of their own organisation's 'risk and resiliency posture' in the context of their industry
  - develop peer networks, (eg with outside directors) to share best governance practices
- Ensure that management:
  - has 'plans for effective collaboration, especially with the public sector, on improving cyber resilience'
- takes into account 'risks stemming from the broader industry connections' (eg third parties, vendors and partners)

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 10/06/2021]

Other News

Modernising document execution requirements: Agreement reached to work towards a common approach across all States and Territories

Attorney General Michaelia Cash and Assistant Minister to the Prime Minister and Cabinet Ben Morton have issued a statement welcoming the decision by Commonwealth, State and Territory Treasurers to 'prioritise working together towards a common approach for document execution'. The agreement follows what is considered to be a successful trial run of using technology for this purpose in response to COVID-19 disruption.

According to the statement there are over 4.5 million deeds and more than 3.8 million statutory declarations completed in Australia each year by Small and Medium Enterprises and consumers. Research commissioned by the Deregulation Taskforce has identified that streamlining the process for creating and executing these documents could deliver an annual saving in excess of $400 million in direct costs and wasted time annually.

A common, consistent approach to document execution could help bring some common sense to commercial transactions across Australia.

> [Source: Joint media release Attorney General Michaelia Cash, Assistant Minister to the Prime Minister and Cabinet Ben Morton 11/06/2021]

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