Governance News

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

24 March 2021

Contents

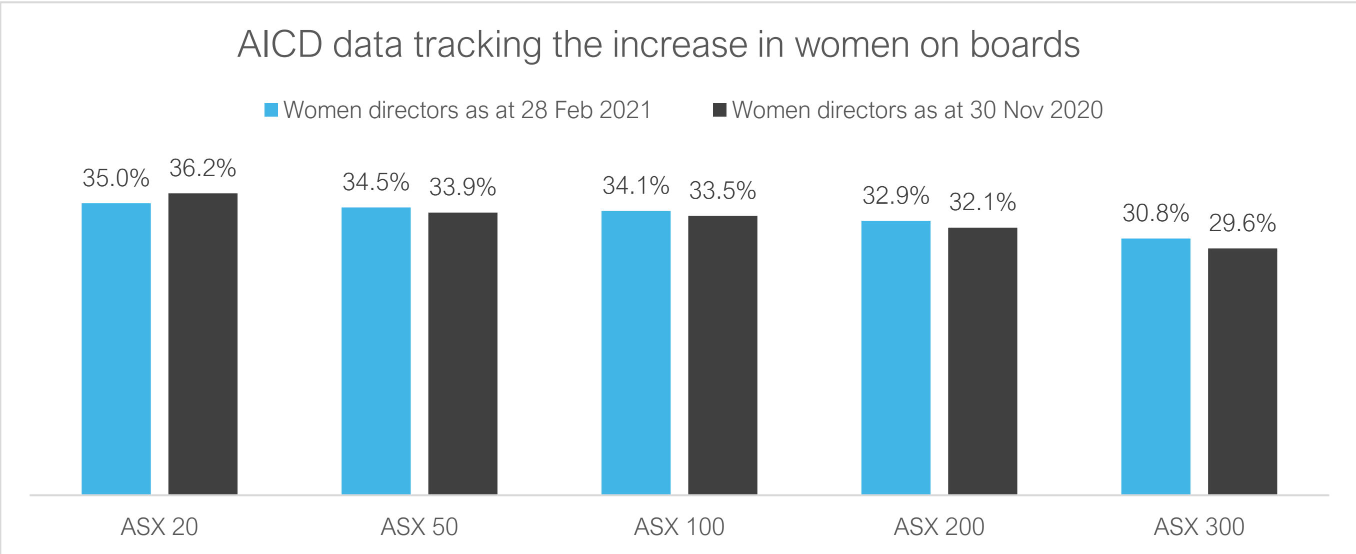
Diversity

There are still fewer women than men being appointed to boards in Australia but AICD data shows that the number of women appointees is on the rise

The Australian Institute of Directors (AICD) has released an update on the proportion of women on boards as at 28 February 2021.

Key Takeaways

- The gradual increase in the proportion of women being appointed to ASX 200 boards is continuing:
  - In 2011 the appointment rate for women on ASX 200 boards was 28%. In 2020 this has risen to 42.6%
  - In January and February of 2021, the female appointment rate had risen to 46.7% for ASX 200 boards and 52.4% for ASX 300 boards.
- The number of board seats held by women has also (mostly) continued to increase as can be seen in the graphic below. Representation on ASX 20 boards has slightly fallen from 36.2% at the end of las year, to 35% in February 2021.



The AICD's General Manager of Advocacy, Louise Petschler commented that though the increase in the female appointment rate is encouraging, there is still work to do. For example, more than a third of ASX 200 boards are yet to reach the 30% female representation threshold and, as at 28 February 2021, and two ASX 200 companies still had all-male boards.

Ms Petschler said that the AICD continues to encourage every organise to 'embrace a board diversity model of 40:40:20 [ie 40% women, 40% men and 20% open]…as good practice.'

[Source: AICD media release 22/03/2021]

Diversity is a regulatory priority: The FCA has signalled plans to sharpen its focus on diversity including considering setting minimum diversity requirements through the premium listing rules

Financial Conduct Authority (FCA) CEO Nikhil Rathi's speech at the launch of the Women in Finance Charter Annual Review focused on the importance of diversity from a regulatory standpoint, and the need for firms to do more to improve diversity (in the broad sense) at an organisational level.

Mr Rathi observed that though the Women in Finance Charter has had some impact in increasing female representation in senior leadership, progress has been limited raising questions about the inclusivity of firms' culture and ultimately their ability to serve the needs of their customers. Mr Rathi commented,

> 'I would question if any firm can adequately respond to the needs of these [diverse] consumers if they do not have the diversity of background and experience required to overcome biases and blind spots. Ultimately, improving diversity and inclusion is both a matter of fairness and a crucial way to strengthen consumer outcomes'.

Mr Rathi flagged that the regulator intends to:

- sharpen its focus on organisational diversity (rather than purely focusing on diversity in leadership) as part of its focus on culture:
  - Mr Rathi said that the FCA 'will increasingly be asking tough questions…about representation across grades and whether their culture is open and inclusive and provides a safe space for colleagues at all levels of the organisation'.
  - Mr Rathi noted that as part of its work on banking culture, the FCA introduced five conduct questions 'to help focus minds of senior managers on conduct risk'. He suggested that these could be expanded to include an additional question: 'is your management team diverse enough to provide adequate challenge and do you create the right environment in which people of all backgrounds can speak up?'
- monitor progress towards increased diversity in leadership and consider 'how best to use out powers' if there is no improvement. For example, the FCA may consider whether 'the diversity of management teams – and the inclusivity of the management culture they create – could be part of our consideration of senior manager applications'
- consider following Nasdaq in implementing minimum diversity requirements through the premium listing rules.

[Source: Speech by our CEO, Nikhil Rathi, at the launch of the HM Treasury Women in Finance Charter Annual Review: Why diversity and inclusion are regulatory issues 17/03/2021]

HESTA has renewed calls for ASX 200 companies to commit to gender parity in leadership by 2030

HESTA has reiterated calls for ASX 200 companies to commit to taking concrete steps to increase the number of women in leadership roles, especially CEO and Chair roles.

Specifically, HESTA has called on all ASX 200 companies to commit to setting a 2030 target for achieving gender parity (ie 40% women, 40% men, and 20% open).

HESTA launched the 40:40 Vision initiative last year with industry partners out of concern that the number of women in leadership positions had stalled. For example:

- only 25% of ASX200 executive leadership positions held by women
- only 5% of CEO roles at ASX 200 companies are held by women
- of the 25 new ASX 200 CEOs appointed last year, only one was a woman

HESTA CEO Debby Blakey commented,

> 'The 40:40 Vision initiative was necessary because a lack of gender diversity in leadership is ultimately a financial risk. We have set ambitious targets; the time for waiting is over because we can't wait decades to see equal numbers of men and women in senior leadership.'

The initiative has the backing of investors (eg the Australian Council of Superannuation Investors (ACSI), BlackRock, Aberdeen Standard Investments among others).

The list of ASX 200 companies that have pledged support to the initiative and the targets they've set are summarised in a table on the 40:40:20 website here.

[Source: HESTA media release 16/03/2021]

In Brief | Californian firms face a diversity challenge: According to an Equilar, with nine months left to meet the minimum board diversity requirements in California's AB-979, 47.1% of eligible companies would not meet the requirements

[Source: Equilar media release 16/03/2021]

Meetings and Proxy Advisers

On hold? Back to pre-COVID execution and meeting requirements (at least for now)

Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 (Determination No. 3) which operated to temporarily remove legal uncertainty around the validity of virtual meetings and to enable electronic execution of documents by company officers under section 127 of the Corporations Act 2001 (Cth) expired on 21 March 2021. You can find a short summary of the measures in the original determination (which were subsequently extended) here.

In consequence, pre-COVID requirements now apply. That is, the temporary changes to requirements in the Corporations Act 2001 (Cth) and regulations have reverted to their pre-COVID form.

Wasn't there a Bill that would have further extended relief?

A government Bill - Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 (our summary here) – which would have temporarily extended and expanded on the changes in Determination No. 3, passed the House on 17 March, but has so far failed to pass the Senate, notwithstanding the Economics References Committee's recommendation that the Bill be passed without amendment. You can find details of the Committee's report on the Bill here.

The Senate has now 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.

Short term relief (may be) in prospect?

On 23 March, ASIC announced that it will adopt a temporary no-action position on virtual AGMs, though the regulator makes clear that this will not extend to electronic signatures.

ASIC has said it will make the details of its position available 'over the coming days' including providing guidance around the 'appropriate approach to conducting virtual meetings'.

In the interim, in order to 'provide the market with a degree of certainty' the regulator has said that the no action position will:

- 'support the holding of meetings using appropriate technology;
- facilitate electronic dispatch of notices of meeting including supplementary notices; and
- allow public companies an additional two months to hold their AGMs'

This appears to signal that there may be some relief in prospect for those companies who had planned to hold electronic meetings and who have already issued their notice of meeting to shareholders on that basis.

Longer term outlook for reform?

The Senate report on Treasury Laws Amendment (2021 Measures No. 1) Bill 2021 found there is broad stakeholder support for the measures included in Schedule 1 (which relate to electronic meetings and electronic execution) at least on a temporary basis, as well as the necessary political support from opposition parties. Shadow Assistant Treasurer Stephen Jones has separately underlined Labor's support for a further temporary extension of the measures.

However, the proposed changes in Schedule 2 (relating to the permanent relaxation of continuous disclosure requirements) remain controversial.

It remains to be seen whether the government will bow to pressure to split the Bill to enable passage of the less controversial reforms in Schedule 1. However, given the level of support for modernising existing requirements and the continued uncertainty around COVID-19 restrictions, it appears unlikely that changes will be allowed to stall indefinitely.

The Law Council has called on the government to take 'emergency' action on the issue, though as the measures have been allowed to expire this appears unlikely.

So for now at least it's back to wet ink signatures and physical meetings, though some entities may (once full details become available) opt to rely on ASIC's no-action position in the immediate term.

[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]

Shareholder Activism

Rio Tinto board endorses two advisory ESG resolutions requisitioned by Market Forces and the ACCR

Ahead of the company's 6 April AGM, the Rio Tinto board has called on shareholders to support two advisory ESG resolutions requisitioned by two groups of shareholders.

- The first (coordinated by Market Forces) calls on the company to disclose (in annual reports), short, medium and long terms targets for scope 1 and 2 emissions and performance against those targets. The resolution also calls for the targets to be independently verified as being aligned with the goals of the Paris Agreement.
- The second (coordinated by the Australasian Centre for Corporate Responsibility (ACCR)) calls on the company to 'enhance' its annual review of industry associations to ensure that the review identifies any inconsistencies with the goals of the Paris Agreement in the associations' activities/advocacy and to suspend membership of an association for 'a period deemed suitable by the board' where inconsistency is identified.

Rio Tinto states that it is recommending shareholders vote in favour of both resolutions on the basis that the company's current approach is already 'substantially consistent' with the demands.

You can find the full text of the resolutions and more detail around why the board has endorsed both resolutions in the addendum to the notice of meeting here.

ACCR Director of Climate and Environment Dan Gocher welcomed Rio Tinto's announcement commenting that,

> 'For the first time, the board of an Australian company has supported a shareholder resolution. Rio Tinto should be commended for this.'

Mr Gocher added that,

'Groups including the Minerals Council of Australia, the Queensland Resources Council and the Chamber of Minerals and Energy of Western Australia, should see this as a clear warning: lobby in support of the Paris Agreement or they will lose one of their largest members'.

Related News: update on approach to cultural heritage

Rio Tinto has outlined plans to strengthen 'strengthen and improve its approach to cultural heritage and community relations' following the destruction of the Juukan Gorge rock shelters in 2020.

Key measures include:

- establishment of an Indigenous Advisory Group (IAG) to ensure the company has 'a better understanding of Indigenous culture and issues in Australia, including at board level'
- a commitment to 'additional disclosures on the progress of heritage measures being undertaken' by the company including (among other things) disclosure of how Traditional Owners' views are being sought/considered. Interim reporting will commence from Q3 2021.

[Sources: Rio Tino media releases 19/03/2021; 23/03/2021; Addendum to the 2021 Notice of Meeting; ACCR media release 19/03/2021]

Proxy Preview 2021: An overview of the key concerns/themes in the shareholder ESG proposals filed so far

The Sustainable Investments Institute and As You Sow has released Proxy Preview 2021 report providing an overview of the key concerns/themes in the 425 shareholder ESG resolutions filed so far in 2021.

Some Key Takeaways

- **The number of shareholder ESG proposals remains high:** According to the report, 435 shareholder ESG resolutions had been filed so far in 2021 (as at mid-February), up from 429 at this point in 2020 but down slightly from the 'all time high' of just under 500 in 2017
- **More proposals are being withdrawn ahead of meetings:** 90 proposals had already been withdrawn ahead of meetings (up from 78 at the same time in 2020, and 71 in mid-February 2019). The report suggests that this may be due to increased awareness/willingness by companies to engage with and make concessions to shareholders on key issues
- **Requests to omit proposals:** The Securities and Exchange Commission (SEC) had agreed to grant company requests to block 24 proposals (so far) and was yet to decide on requests to block a further 74 proposals.

New issues in 2021

The table below provide a very high level snapshot of the most common topics/demands being made and some of the new issues emerging in shareholder proposals.

TOPIC AREA	PATTERNS/NEW DEVELOPMENTS
Environment	▪ **Climate remains the key concern**: – 91 shareholder proposals concern the environment – Of this group, 66 proposals directly concern climate change and another 13 directly concern climate-related lobbying. ▪ **Carbon asset risk**:56 proposals seek disclosure around how companies are managing their carbon asset risks and their plans for transitioning to a low carbon economy. ▪ **Say on climate:** The report flags 'say on climate' proposals as the 'biggest new development on climate change' globally in 2021. The report comments that so far, proponents have engaged 75 companies and 'plan to file hundreds of proposals at the end of 2021, escalating globally in partnership with proponents in Australia, Asia, Europe, and Canada'. ▪ **Other new proposals** this year, flagged in the report include proposals seeking disclosure around cutting scope 3 emissions (eg proposals at Chevron and Occidental Petroleum) as well as proposals seeking disclosure of how companies will reach their net-zero by 2050 targets
Social issues	▪ **Political lobbying:** The report comments that in the wake of the storming of the Capitol in January, there has been increased focus on political lobbying/spending. 78 proposals filed to

TOPIC AREA	PATTERNS/NEW DEVELOPMENTS
	date seek explicit board oversight and reporting on companies' spending on influencing election outcomes/lobbying efforts ▪ **Racial justice:** One new proposal (at retailer Best Buy) highlighted in the report seeks information about lobbying connected to racial justice ▪ **Racism/diversity related proposals**: – 18 new proposals seek information about mitigating racism – Compared with last year the number of proposals seeking fair pay/equitable working conditions has fallen 50% while the number of diversity related proposals has doubled. ▪ **Other proposals** concern a range of social issues including animal welfare, health and workplace safety (among other issues)
Sustainable governance	▪ **Board diversity:** Only 30 proposals call for increased board diversity (which is the lowest level in five years). ▪ **Board oversight of specific issues:** Only 8 proposals concern demands for board oversight of specific issues (down from 24 two years ago) ▪ **Public interest corporation proposals:** 14 resolutions (coordinated by The Shareholder Commons) have been filed seeking that companies reincorporate as public benefit corporations. The report comments that these proposals have effectively taken the place of sustainability reporting proposals. ▪ **Incorporating ESG metrics into executive pay:** The number of resolutions seeking that companies incorporate ESG metrics into executive pay plans fell by 50% in 2021 (after holding steady at 20 for the past three years)

[Sources: As You Sow media release 18/03/2021; Full text report: Proxy Preview 2021]

Scope 3 resolutions: SEC denies requests from Occidental Petroleum Corporation and ConocoPhillips Company to block shareholder resolutions

The Securities and Exchange Commission (SEC) has denied separate requests from Occidental Petroleum Corporations and ConocoPhillips Company to block shareholders from voting on shareholder ESG resolutions calling on the companies to provide details of their net-zero transition plans, including their scope 3 emissions targets.

Details

- **Occidental Petroleum:** The resolution calls on the company to 'include medium-term targets covering the greenhouse gas (GHG) emissions of the Company's energy products (Scope 3) on their pathway to their long-term target, which is net-zero emissions before 2050'. Occidental argued that SEC should allow the resolution to be omitted on the basis that 'it deals with matters relating to the Company's ordinary business operations as it impermissibly seeks to impose prescriptive methods for implementing complex policies related to the Company's strategy for addressing greenhouse gas (GHG) emissions'. For further details see Occidental's request to SEC here.
- **ConocoPhillips Company:** The resolution called on the company to 'address the risks and opportunities presented by the global transition towards a lower emissions energy system by setting emission reduction targets covering the greenhouse gas (GHG) emissions of the company's operations as well as their energy products (Scope 1, 2, and 3)'. The company argued that SEC should allow the resolution to be omitted on the basis that: a) the company has already 'substantially implemented' the proposal; and b) because the proposal seeks to 'address matters related to the company's ordinary business operations by impermissibly micromanaging the Company'. For further details see ConcocPhillips' request to SEC here.

[Sources: Occidental Petroleum request 29/01/2021; ConocoPhillips Company request 06/01/2021; SEC decisions]

Disclosure and Reporting

How do companies measure up against key indicators of a 'robust net zero aligned business strategy'? Climate Action 100+ benchmark released

Climate Action 100+ has released its first benchmark assessment: the Climate Action 100+ Net Zero Company Benchmark.

The Benchmark provides 'detailed, comparative assessments of individual focus company performance' against set indicators of alignment with the goals of the Paris Agreement and the transition to a net zero economy. Broadly, the benchmark assessed the performance of 159 focus companies (including 12 Australian companies) against three high level goals: 1) emissions reduction; 2) governance; and 3) disclosure.

A baseline against which to assess alignment with the transition to a net zero economy

The Benchmark does not specifically score or rank companies, or use overall numeric or alphabetic ratings. Rather it uses a traffic light system to indicate the extent to which individual companies measure up against set indicators.

The purpose of the benchmark is to clearly define the key elements of a robust 'net-zero aligned' business strategy and to establish a baseline against which company's commitments/actions can be assessed.

More action is required

Overall, Climate Action 100+ considers that though some companies are ahead of others, no company performed at a high level across all indicators and metrics or fully disclosed how it will achieve its net zero ambition.

In fact, the group considers that the benchmark shows that 'most of the world's largest companies are still in the early stages of the shift to a net zero economy'.

Some overall findings:

- TCFD reporting: Though most (72%) of focus companies have committed to aligning their disclosure with the TCFD recommendations and/or support the recommendations, only 10% include a 1.5 degrees Celsius scenario in their climate scenario planning
- Scope 3 emissions are often not included: Though 83 of the 159 focus companies have announced a net zero by 2050 (or sooner) ambition, 44 companies' commitments don't include scope 3 emissions ie do not include the full scope of emissions
- Short and medium term targets are (in the main) not measuring up:
  - Though 107 of 159 focus companies have set medium term targets (2026-2035), only 21 companies are fully aligned with 100% of assessment criteria.
  - Though 75 companies have set short term targets (up to 2025), only eight meet all assessment criteria
- Lack of commitment to align future capital expenditure with the goals of the Paris agreement: Climate Action 100+ comments that no company has so far committed to aligning future capital expenditure with the goal of limiting temperature rise to 1.5 degrees and only six of the 159 focus companies have explicitly committed to aligning their future capital expenditures with their long-term emissions reduction targets.
- Accountability and oversight of progress against targets: Though 139 of 159 focus companies have board-level oversight of climate change, only one third of companies have tied executive remuneration to the achievement of/progress against the company's emission reduction targets.

The full set of assessments can be downloaded in excel format here.

Commenting on the release of the benchmark, Australasian Centre for Corporate Responsibility (ACCR) Director of Climate and Environment Dan Gocher called on Australian companies in particular, to do more.

> 'None of the 12 Australian companies in the Climate Action 100+ initiative have aligned their capital expenditure with the Paris Agreement…No Australian company has committed to significantly reduce their Scope 3 emissions, which is now a key demand from institutional investors. The lack of progress from Australian companies is clear for all to see. Investors must now be prepared to take unprecedented action. Support for shareholder resolutions and voting against directors would send a very clear signal that delay will no longer be tolerated.

Next steps

- The Benchmark is expected to 'continue to evolve' and will continue to be updated. The next iteration will be released in 2022.
- Climate Action 100+ intends to release sector by sector analyses in the coming months to build on the information in the individual assessments.

[Sources: Climate Action 100+ media release 22/03/2021; The Climate Action 100+ Net-Zero Company Benchmark; As You Sow media release 23/03/2021; ACCR media release 23/03/2021]

Consultation open: SEC is seeking investor feedback on climate disclosure

US Securities and Exchange Commission (SEC) Acting Chair Allison Herren Lee has called for stakeholder views on the regulator's existing climate change disclosure rules and guidance including how existing rules should be modified to help inform SEC's own evaluation of existing rules.

SEC seeks feedback on a broad range of issues including the following (among others).

- SEC's overall approach to overseeing/monitoring climate change disclosure including how SEC can best monitor disclosure to help ensure access to 'more consistent comparable and reliable information for investors' and where disclosure should be provided
- Metrics: Whether there are specific metrics that all registrants should be required to report on eg scope 1, 2, and 3 greenhouse gas emissions and greenhouse gas reduction goals
- Industry-led minimum disclosure standards:
  - Views on the advantages/disadvantages of enabling industry to develop minimum disclosure standards, and how these would interact with minimum disclosure requirements set by SEC.
  - Views on the advantages/disadvantages of establishing different climate reporting standards for different industries/how these should be implemented
- Existing frameworks:
  - Whether SEC should incorporate/draw on existing frameworks (eg the TCFD, SASB and CDS frameworks)
  - Views on the benefits (or not) of a single set of global standards applicable to all companies
  - Views on whether compliance with a global standard (endorsed or incorporated by the SEC) should be mandatory
- Ensuring the reliability of information:
  - Views on how compliance should be enforced eg should disclosures be subject to audit or another form of assurance
  - Whether the SEC should consider other measures to ensure the reliability of climate-related disclosures eg should SEC consider requiring certification of climate disclosure by the CEO, CFO or other corporate officer
- Comply or explain model: Views on the advantages/disadvantages of adopting a 'comply or explain' framework for climate change disclosure
- Private companies: Views on how the SEC should approach disclosure by private companies and what rules should apply
- Sustainability disclosure: Views on whether climate-related requirements should be treated as one element of a broader ESG disclosure framework

[Source: SEC public statement 15/03/2021; Harvard Law School Forum on Corporate Governance and Financial Regulation 16/03/2021]

Regulators

Top Story | ASIC's new immunity policy: What is it? What does it aim to do?

Key Takeouts

- ASIC's new immunity policy provides an avenue for an individual who has engaged with others in market misconduct (in contravention of Part 7.10 of the Corporations Act 2001 (Cth)) to apply for immunity from civil and criminal penalty proceedings
- A key plank of the policy is incentivising individuals to come forward early by limiting eligibility to claim immunity to the person who is 'first in' to report their involvement in the misconduct
- Under the policy, immunity is not granted until fairly late in the process (and is then conditional on meeting various ongoing conditions)
- The release of the new policy underlines ASIC's focus on targeting corporate misconduct following the Hayne Commission

The new policy

On 24 February 2021, ASIC published an immunity policy under which the first individual to report their involvement (with at least one other person) in market misconduct in contravention of a provision of Part 7.10 of the Corporations Act 2001 (Cth) (the Act) may be eligible to apply for immunity from civil and criminal proceedings.

The policy is intended to both incentivise individuals to voluntarily come forward by offering a chance to avoid potentially substantial penalties (eg gaol time) and to assist ASIC in taking action against misconduct that may otherwise be difficult to identify or address, enhancing ASIC's enforcement toolkit.

Conduct covered

The policy applies to all civil and criminal penalty provisions in Pt 7.10 of the Act. This includes for example provisions dealing with insider trading, market manipulation, false trading and market rigging, and dishonest, misleading and deceptive conduct in relation to financial products and services.

The policy does not apply to compensation proceedings or administrative proceedings (eg disqualification from managing a corporation or a ban on providing financial services or engaging in credit activities).

Eligibility

Paragraph 11 of the policy sets out the eligibility criteria. Broadly, individuals may be eligible if they meet all of the following conditions:

- they are the first person to report to ASIC that they may have contravened, with at least one other person, a provision in Part 7.10 of the Corporations Act
- they admit that they have participated in/are participating in the misconduct
- they are not the instigator of the misconduct and ASIC is satisfied that they did not coerce others into engaging in the misconduct
- they have either ceased already or are prepared to immediately cease their involvement in the misconduct
- they provide 'full, frank and truthful disclosure, have cooperated fully and expeditiously while making the application, and have undertaken to continue to do so throughout ASIC's investigation and any ensuing court proceedings'.

In addition, ASIC must not have already commenced an investigation in respect of the misconduct when the disclosure is made.

Corporate entities are not eligible under the policy and ASIC will not accept joint immunity applications made on behalf of more than one individual.

The process of securing immunity

Securing 'first in' status in the 'immunity queue'

An application for immunity starts with admitting involvement in misconduct to ASIC and applying for a 'marker'. This 'marker' operates to secure (for a limited time) the status of the applicant as the first to apply for immunity in respect of specific misconduct. Importantly, as long as an individual holds the marker, no other individual is eligible to apply for immunity for the same conduct.

This is intended to encourage individuals to come forward as soon as possible – and at any rate, before other parties involved in the misconduct - or risk being ineligible under the policy.

Where a marker is not available, ASIC will still keep a record of the details of the application and the applicant's position in the 'immunity queue'. Should the 'first in' applicant ultimately be deemed ineligible, or withdraw their application for immunity or where the applicant's immunity is revoked, the next person in the 'immunity queue' may become eligible to receive a marker.

ASIC comments that applicants not eligible under the policy are still able to 'seek lenient treatment' by cooperating with ASIC's investigation as outlined in Information Sheet 172.

A staged, conditional process

After a marker is granted, the applicant is then required to provide a detailed written description of the misconduct (referred to in the policy as a 'proffer'). ASIC makes clear that any grant of 'conditional immunity' from civil or criminal proceedings is contingent not only on meeting the eligibility criteria but on the proffer including 'sufficient information for ASIC to determine the nature of the misconduct and the other person(s) involved in the misconduct' including the type of evidence that can be provided.

If immunity is ultimately not granted, information included in the proffer document may still be used by the regulator to further its investigation.

Limited scope

ASIC makes clear that a 'marker' and any subsequent grant of 'conditional immunity' is specific to the reported conduct. This means that should it emerge, after a marker and conditional immunity have been granted, that the misconduct is broader than first reported then the individual may need to either apply for an expansion of their conditional immunity or make a separate and additional application to cover the conduct.

Immunity from civil penalty proceedings

A grant of conditional immunity once granted will remain in place and become final only after completion of civil proceedings against the other individual(s) involved in the misconduct. The grant of final immunity is also subject to the applicant meeting certain conditions including:

- maintaining their eligibility under paragraph 11
- forfeiting the profits of any wrongdoing and (where ASIC considers it to be appropriate) making restitution to the victims of any wrongdoing
- providing 'full, frank and truthful disclosure and cooperate fully and expeditiously throughout our investigation and any ensuing proceedings'
- maintaining confidentiality regarding their status as an immunity applicant/details of the investigation (unless granted written consent by ASIC/required by law).

Immunity from criminal proceedings

Where ASIC is satisfied that an individual meets the eligibility criteria and with the information provided in the proffer, ASIC will make a recommendation to the DPP that immunity from prosecution be granted on a conditional basis. The DPP will then exercise its own independent discretion and where it considers that the conditions in Annexure E of the policy are met, will issue a 'letter of comfort'.

Final immunity would only be granted prior to the commencement of a prosecution of another individual(s) for the alleged misconduct, and only then if certain conditions are met. These conditions include:

- providing ongoing, full cooperation during the investigation

- appearing as a witness for the prosecution as and when requested in any proceedings against the other participants
- giving truthful, accurate and complete evidence.

Immunity may be revoked

Importantly, a grant of conditional or final immunity from both civil or criminal proceedings may be revoked if the conditions of immunity are breached.

[Sources: ASIC media release 24/02/2021; ASIC immunity policy; ASIC Immunity Policy FAQs, Request for marker form; INFO 172 Cooperating with ASIC]

ASIC's 'full agenda': ASIC's opening statement to the parliamentary committee

In his opening statement to the Parliamentary Joint Committee on Corporations and Financial Services hearing on 19 March, Australian Securities and Investments Commission (ASIC) Chair James Shipton said outlined the steps that the regulator has implemented in response to Treasury's governance review and provided a brief update on what he described as ASIC's 'very full agenda'.

Mr Shipton commented that 'despite the distraction caused by recent events' ASIC's work, including enforcement work, has continued.

Highlights from ASIC's current work program

Mr Shipton said that ASIC's current focus areas include:

- cybersecurity and more particularly 'addressing the real and growing threats pose by cyber attacks'
- continued focus on supporting businesses through the COVID-19 pandemic and 'exploring actions' to take to support the economic recovery
- protecting consumers and investors against scams and 'other forms of inappropriate practice'
- implementation of reforms flowing from the Hayne Commission including the commencement of design and distribution obligations
- 'developing' its approach to conduct regulator in superannuation
- enforcement work:
  - ASIC is focused on finalising remaining Hayne referrals and case studies;
  - separately (ie not connected with the Hayne Commission) ASIC has eight matters in litigation; two briefs of evidence in support of criminal charges with the Commonwealth Director of Public Prosecutions; more than 20 enforcement investigations on foot as well as 'multiple surveillances about potential trustee misconduct'.

Response to Treasury's governance review to be finalised by the end of March

Commenting briefly on ASIC's response to the issues raised by the Auditor General and Treasury's review Mr Shipton said that ASIC has taken action to rectify the issues identified and to improve relevant policies/procedures/governance arrangements. These steps include:

- Ensuring Committee oversight of reporting and monitoring of audit findings and actions

- Establishing an Executive Integrity Committee, to oversee compliance with ASIC's obligation to notify the Australian Commission for Law Enforcement Integrity (ACLEI) of corruption issues involving our law enforcement activities
- Establishing a centralised incident and breach reporting register for ASIC's key obligations that will be available to all ASIC staff
- Finalising the review of potential procurement breaches and developing a mitigation strategy to risks/issues identified
- Developing new expenses policies including approval and sign-off processes

It's expected that implementation of Treasury's recommendations will be finalised by 31 March 2021.

In addition, Mr Shipton said that ASIC's Chief Operating Officer Warren Day has taken on responsibility for the management of the operational aspects of ASIC's activities, ie 'the functions of a head of office', in line with the recommendation of the 2015 Capability Review. Mr Shipton said that this will create a 'clearer set of accountabilities within ASIC'.

> [Source: Opening statement by ASIC Chair, James Shipton at the Parliamentary Joint Committee on Corporations and Financial Services 19/03/2021]

New APRA member appointed, shift in responsibilities for APRA leadership

Margaret Cole had been appointed as a full time member of the Australian Prudential Regulation Authority (APRA). Ms Cole will join APRA Chair, Wayne Byres, and the Deputy Chairs, John Lonsdale and Helen Rowell on the APRA Executive Board.

Ms Cole will take up her appointment from 1 July 2021 for a five-year term, replacing Geoff Summerhayes whose term expired on 31 December 2020.

Announcing the new appointment, Treasurer Josh Frydenberg said that Ms Cole will bring valuable international experience in both the public and private sectors to the regulator.

> 'Ms Cole has extensive experience in regulatory and legal fields across both the private and public sectors, having worked as Managing Director of Enforcement and Financial Crime and a Board Member of the UK Financial Services Authority. More recently Ms Cole has worked as General Counsel and Chief Risk Officer of PwC in the UK and subsequently PwC's Global Regulatory Policy and Engagement Leader. Ms Cole also spent over 20 years in private practice as a solicitor specialising in commercial litigation with an emphasis on financial services.

APRA Chair Wayne Byres has separately welcomed Ms Cole's appointment commenting,

> 'Margaret will bring to APRA a strong blend of regulatory and private sector experience, with a particular focus on conduct, risk management and enforcement. Her international experience and perspective will also be a valuable addition to the APRA Executive Board. I am very pleased she was willing to take on the appointment.'

Changes in the allocation of responsibilities

- Ms Cole will take on primary responsibility for overseeing APRA's activities in relation to superannuation taking over from APRA Deputy Chair Helen Rowell.
- Ms Rowell, will assume primary responsibility for overseeing APRA's activities in relation to general, life and private health insurance.

Commenting on the change, Mr Byres said,

> 'Margaret's arrival provides a natural opportunity to review and refresh the allocation of responsibilities amongst the APRA Members, to take advantage of the mix of skills and experience amongst the group. Superannuation is a natural fit for Margaret given her background. Helen, as well as being a qualified actuary, was one of APRA's senior insurance supervisors earlier in her career and was heavily involved in the design of APRA's insurance capital framework, so is very well equipped to oversee the insurance industry.'
>
> [Sources: APRA media release 19/03/2021; Treasurer Josh Frydenberg media release 19/03/2021]

Financial Services

Pushing forward with the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)?

The National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2), a facsimile of the government's own 2017 draft Bill, was introduced into the Senate by Labor Senator Jenny McAllister and Centre Alliance Senator Stirling Griff on 2 December 2019.

Broadly, the Bill proposes to strengthen consumer protections in the context of payday loans and rent to buy schemes by, among other things:

- imposing a cap on the total payments that can be made under a consumer lease (rent-to-buy schemes)
- requiring small amount credit contracts (SACCs) (payday loans) to have equal repayment and payment intervals
- ensuring that a debtor or guarantor has the right to pay out a SACC early
- removing the ability for SACC providers to 'charge monthly fees in respect of the residual term of a loan where a consumer fully repays the loan early'
- preventing lessors and credit assistance providers from undertaking door-to-door selling of leases at residential homes
- introducing anti-avoidance protections
- increasing penalties for non-compliance for SACC providers

On the 15 March the Bill progressed to second reading stage with Labor senators urging support for the measures. This follows the Senate's decision to defer debate on government legislation - National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 - 'until the first day in the next period of sittings' (11 May 2021).

Things have moved on since 2017?

Deputy Government Whip in the Senate Slade Brockman has characterised Labor's support for the Bill as a 'stunt' and rejected arguments that the government has stalled on introducing protections for vulnerable consumers arguing instead that the Bill has been superseded by another government Bill 'in this identical space'. This appears to be a reference to the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 (for details see: Changes to responsible lending on the way?).

Senator Brockman has said that the government will not be supporting the passage of National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2).

> [Source: National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2019 (No. 2)

RBA urges entities to take concrete steps now to prepare for the 'imminent demise' of LIBOR

In his Keynote Address to ISDA Benchmark Strategies Forum Asia Pacific, Reserve Bank of Australia (RBA) Assistant Governor Christopher Kent emphasised the need for entities to take steps now to ensure a smooth transition away from LIBOR and outlined the steps they should be taking to do so.

The headline message in the speech was that,

> 'In short, by the end of 2021, institutions must have already transitioned to alternative reference rates, and for existing contracts where that's not possible, robust fall back provisions must be in place to make clear what the replacement rate will be when LIBOR ends. Any firms that have not done this will, on the 1 January 2022, be facing the prospect of significant disruption to their contracts and operations. This could lead to more widespread disruption through the financial system. Regulators will therefore be keeping a close eye on progress between now and then to ensure that the necessary work is completed on time. For any that may still hold doubts about the need to act, I'd like to stress that there is no alternative path to follow to move away

from LIBOR. Waiting and seeing – for what others do or what other more convenient benchmarks might emerge in the future – is not a viable transition plan'.

[Source: RBA Assistant Governor Christopher Kent, Keynote Address to ISDA Benchmark Strategies Forum Asia Pacific 18/03/2021]

Indemnities in investments: APRA calls on ADIs to ensure appropriate oversight and control mechanisms are in place

The Australian Prudential Regulation Authority (APRA) has released a letter to ADIs underlining the importance of managing the risks associated with indemnities in divestment transactions and outlining its expectations.

The guidance in the letter is intended, APRA writes, to ensure ADIs take a 'consistent and prudent approach' in managing these risks.

APRA's expectations

- Board and management oversight: The letter makes clear that APRA expects boards to review and approve any indemnities that give rise to 'a material contingent liability for an ADI'. APRA states that 'An appropriate level of capital should be held for such risk exposures. ADIs should put in place ongoing oversight and monitoring by senior management and the Board of these indemnities, to ensure the associated risks are effectively managed'.
- ADIs should have clearly defined governance and accountability arrangements in place to 'ensure appropriate oversight and controls around indemnities both in setting them and monitoring and influencing the underlying risks post-transaction'
- Indemnities should be both 'capped and time-bound': The letter comments that 'uncapped indemnities are inconsistent with prudential requirements for ADIs that prohibit unlimited exposures'
- Different indemnity types: The letter states that indemnity types should be 'clearly distinguished' to 'reflect the difference in risk profile of the underlying exposures. This is important for identifying, recording and monitoring the risk, capital treatment and management approach. The oversight of indemnities for conduct-related risks will require particular diligence, given their uncertainty'
- ADIs are expected to 'assess the need to provision for each material indemnity, both at inception and during the life of the indemnity, having regard to the likelihood that the indemnity will be called upon'.
- ADIs are expected to 'hold an appropriate and commensurate level of operational risk capital for the financial risks associated with indemnities'. APRA cautions that where ADIs do not 'demonstrate the appropriateness of intended operational risk capital treatment for current or prospective material indemnities' ie where their approach does not reflect the level of risk appropriately, APRA 'will consider an adjustment to operational risk capital requirements'.
- APRA suggests that 'ADIs should consider gaining independent assessment and validation of provisioning and capital for material indemnities'. The letter further suggests that for 'conduct-related indemnities, this could include independent advice on the likelihood and eventual amount of a claim on the indemnity, as well as expert opinion on the likelihood of claims and success of litigation at other ADIs for similar issues'.

[Source: APRA letter to ADIs 22/03/2021]

BNPL changes? The RBA has flagged it is considering when 'it may be in the public interest' to remove no surcharge rules

Not immediately, but (possibly) soon?

As part of its Review of Retail Payments Regulation the Reserve Bank of Australia has said it is considering 'policy issues raised by Buy Now Pay Later (BNPL) providers' no-surcharge rules'.

At this stage, the RBA's 'preliminary view is that the BNPL operators in Australia have not yet reached a point where it is clear that the costs arising from a no-surcharge rule outweigh the potential benefits in terms of innovation. Over time, however, a public policy case could emerge for the removal of the no-surcharge rules in at least some BNPL arrangements'.

The RBA states that RBA staff are 'continuing to engage with stakeholders on this issue, including on potential criteria for determining the point at which it may be in the public interest for no-surcharge rules to be removed'

[Source: RBA Bulletin 18/03/2021]

NSW flooding: Insurance Council of Australia issues catastrophe declaration for 'large parts of NSW', says its monitoring south-east QLD to determine if a similar declaration is also required for that area

In response to recent flooding, and the receipt of over 5000 insurance claims over the past few days, The Insurance Council of Australia (ICA) has issued a 'catastrophe declaration' for large parts of NSW. This is intended to help ensure that claims related to the flooding will be escalated and prioritised by insurers.

ICA CEO Andrew Hall said that it is still too early to understand the extent of the property damage or to estimate the insurance damage Bill, but that insurers expect further claims in coming days as emergency services allow residents to return to their properties.

As yet, no declaration has been issued for south-east QLD, though the ICA states that the situation is being monitored determine if a catastrophe declaration is also required for that area.

Details

Under the declaration:

- flood related claims will be given priority and 'triaged to direct urgent assistance to the worst affected property owners'
- a disaster hotline has been activated to provide support to policyholders who are uncertain of their insurance details or the claims process
- (once it is safe to do do) ICA representatives and insurers' 'mobile disaster response specialists' will be 'mobilised' to go into impacted areas. ICA representatives will work with local agencies and services as well as affected policy holders. Specialists will conduct assessment and assist policyholders with claims
- an industry taskforce has also been established to identify and address issues arising from the catastrophe

[Source: ICA media release 22/03/2021]

Warning bell: ASIC succeeds in 'true to label' action, Deputy Chair urges fund managers to ensure their marketing does not represent products as being less risky than they are

The Federal Court has handed down its decision in Australian Securities and Investments Commission v Mayfair Wealth Partners Pty Ltd (No 2) [2021] FCA 247.

Broadly, the Court substantially accepted ASIC's case, finding that during the period 3 July 2019 to 16 April 2020 companies in the Mayfair 101 Group made false, misleading or deceptive statements in advertisements for certain debenture products.

More particularly the Court accepted ASIC's argument that the Mayfair group:

- represented to consumers that certain debenture products were comparable to/had a similar risk profile to, bank term deposits when in fact the products exposed investors to a significantly higher risk. The Court held that this conduct contravened s 1041H(1) of the Corporations Act 2001 (Corporations Act) and s 12DA(1) of the Australian Securities and Investments Commission Act 2001 (ASIC Act).
- represented to consumers that, on maturity of the products, the principal would be repaid to them in full, when this might not be in the case (because Mayfair had the contractual right to elect to extend the time for repayment for an indefinite period). The Court held that this conduct contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act; s 12DB(1)(a) of the ASIC Act; and s 12DB(1)(e) of the ASIC Act.
- represented to consumers that the products were designed for investors 'seeking certainty' with no risk of default when in fact there was a risk that investors could lose some/all of their principal investment. The Court held that this conduct contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act; s 12DB(1)(a) of the ASIC Act and s 12DB(1)(e) of the ASIC Act.

The Court also found that Mayfair Wealth Partners Pty Ltd (trading as Mayfair Platinum), M101 and Online Investments Pty Ltd (trading as Mayfair 101) represented that a certain product (M Core Fixed Income Notes), were fully secured financial products when this was not the case.

The funds invested in the product were: lent to a third party and not secured by first-ranking, unencumbered asset security or on a dollar-for-dollar basis or at all; used to pay deposits on properties prior to any security interest being registered; and used to purchase assets that were not secured by first-ranking, unencumbered asset security.

The Court held that this conduct contravened s 1041H(1) of the Corporations Act and s 12DA(1) of the ASIC Act; s 12DB(1)(a) of the ASIC Act; and s 12DB(1)(e) of the ASIC Act.

The decision sets out a number of examples, relied on by ASIC to substantiate its case, which were accepted as evidence of the contraventions by the Court (from para [95] in the decision).

A penalty hearing has not yet been listed by the Court.

ASIC has welcomed the decision and cautioned other fund managers to ensure their advertising is 'true to label'

ASIC Deputy Chair Karen Chester has welcomed the decision stating,

> 'ASIC's success in Court today demonstrates firms need to do the right thing by their investors, even when they are wholesale investors. They need to make sure they accurately describe their products when advertising. The Court has shown that Mayfair 101 engaged in misleading and deceptive conduct by claiming its products were comparable to bank term deposits, when they were not'.

Mr Chester went on to caution that the regulator's 'True to Label' project identified 30 funds that are similarly 'misleading investors' through advertising by claiming that the products on offer are less risky than is in fact the case.

Ms Chester commented,

> 'This case is a warning that ASIC will not only take action where investments are marketed as safer, lower risk, or more liquid when they are not, but when search engines are used in a misleading or deceptive way to entice investors to products they are not searching for.'

> [Sources: ASIC media release 23/03/2021; Australian Securities and Investments Commission v Mayfair Wealth Partners Pty Ltd (No 2) [2021] FCA 247]

Consumer harm: UK regulator raises concerns about the potential harms posed by high-risk investment products for over-confident, younger investors

As part of its broader work addressing harm in the consumer investment market, the UK Financial Conduct Authority (FCA) commissioned a survey of 517 self-directed investors aimed at identifying how investors who engage in high risk investments (eg cryptocurrencies) approach investing. The full report - Understanding self directed investors – is here.

Among other things, the report found that:

- **There has been an overall change in the self-directed investor profile:** high risk investments are increasingly attracting younger, more gender and ethnically diverse, less financially resilient and less experienced consumers. The report suggests that this group are 'potentially drawn by the accessibility offered by new investment apps'. The group is also more likely to use YouTube or social media for news/tips than other more traditional sources.
- **Investors are often motivated by emotional and social motivations** (eg wanting to feel like 'an investor) than by 'functional' motivations (eg wanting to make their money work harder or save for their retirement).
- **High confidence, low knowledge**: Though self-directed investors were found to often have a high degree of confidence and claimed knowledge, the report concludes that 'the reality of their behaviours and beliefs around investing indicate that this can be misplaced'. For example:
  - many survey participants lacked risk awareness: The survey found that 45% of survey participants did not view 'losing some money' as a potential risk, despite the presence of disclaimer warnings
  - most survey participants were confident in their ability to identify scams and/or fraud based on an opportunity 'not feeling right' or 'looking unprofessional'

Next steps

- The research will be used to help inform a new campaign aimed at addressing the consumer harm caused by consumers investing high risk investments.
- The FCA has also:

- launched a preventative advertising campaign – the 'digital disruption campaign' – which uses online advertising to 'disrupt investors' journeys and drive them to the high return investments webpage'
- released details of its 2020 consumer data review which outlines the work being done by the regulator to address consumer harm in the investment market. The FCA has indicated that it will outline 'further plans' in relation to this, 'later this year'
- published a warning to consumers on the dangers of investments advertising high returns based on cryptoassets.

[Sources: FCA media release 23/03/2021; Full text report: Understanding self directed investors]

COVID-19 prompts cash hoarding?

Reserve Bank of Australia (RBA) data shows that the demand for cash in Australia was 'extraordinarily high over 2020' despite a decline in the use of cash for day to day transactions. The RBA attributes this to the impact of the COVID-19 pandemic. The RBA comments,

> 'Much of the strong demand for banknotes can be attributed to people's desire to hold cash for precautionary or store-of-wealth purposes. This behaviour is common during periods of significant economic uncertainty and stress, and many other countries saw similar patterns of cash demand'.

[Source: RBA Bulletin 18/03/2021]

In Brief | Responsible lending: The Treasurer has announced that the temporary small business exemption due to expire on 2 April will be extended until the government secures passage of the National Consumer Credit Protection Amendment (Supporting Economic Recovery) Bill 2020 through the Senate. Mr Frydenberg said that 'the extension will continue to provide the certainty and confidence necessary to allow small businesses to access credit in a timely and efficient manner'

[Source: Treasurer Josh Frydenberg 19/03/2021]

In Brief | UK BI Test case: According to the FCA, insurers have reported that as at 3 March 2021, 10,207 BI policy holders (out the total 21,140 who have had their claims accepted) have received at least an interim payment. Overall, insurers report that they have so far paid out £192,084,302 in interim/initial payments and £279,823,468 in final settlements

[Source: FCA media release 22/03/2021]

In Brief | INFO Sheet 250 released: ASIC has released an information sheet outlining its approach to giving AFS and credit licensees information about their representatives

[Source: ASIC Information Sheet 250: Giving AFS and credit licensees information about their representatives]

In Brief | Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 received assent on 22 March 2021

[Source: Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020]

Accounting and Audit

In Brief | The UK government is consulting on proposals for the overhaul the UK's audit regime. The proposals outline the government's proposed approach to implementing its response to the three recent reviews into the audit UK sector: the Kingman Review of the Financial Reporting Council; the Competition and Market Authority's statutory audit market study, and the Brydon Review of the quality and effectiveness of audit. The deadline for submissions is 8 July 2021

[Source: Consultation paper: Restoring trust in audit and corporate governance: proposals on reforms; BEIS media releases 18/03/2021; 18/03/2021; FRC media release 22/03/2021;]

Risk Management

ESG

'First of its kind' greenwashing complaint lodged with the US Federal Trade Commission

Environmental groups, Earthworks, Global Witness, and Greenpeace USA have jointly filed a complaint at the Federal Trade Commission (FTC) against Chevron for alleged greenwashing in advertising.

Broadly, the groups allege that contrary to FTC guidance on how to avoid making environmental claims in advertising that may mislead consumers (in the FTC's green guides), Chevron's advertising across various mediums misrepresents its image to 'appear climate-friendly and racial justice-oriented, while its business operations overwhelmingly rely on climate-polluting fossil fuels, which disproportionately harm communities of colour'.

The groups are calling on the FTC to require Chevron to: a) remove certain marketing claims that they consider misleading; b) issue 'corrective statements'; and c) to make an 'assessment of appropriate relief' in accordance with the FTC rules.

[Source: Earthworks media release 16/03/2021]

Greenwash? Dow Jones agrees to review the inclusion of a company in its sustainability index after Market Forces raises concerns

Market Forces (together with a coalition of environmental groups) has written to the Dow Jones Sustainability Index (DJSI) Committee, calling for an urgent review of the inclusion of Adani Ports in the index.

The groups argued that 'failure to consider the evidence [of Adani's environmental and social impacts which the group outlines in the letter] puts the credibility of the DJSI at risk, as clients using the index could become exposed to the reputational and financial risks associated with Adani's activities'. The full text of the letter is here.

Following receipt of the letter, Dow Jones has confirmed that it will review Adani's inclusion in the index. The groups have now called on the S&P to be 'transparent about its review process and to allow impacted communities and other stakeholders to respond to any claims made by Adani'.

[Sources: Market Forces media release 17/03/2021; 19/03/2021]

Green commitments: Coles has set a target to switch to souring100% of its power from renewable sources by the end of FY25, Greenpeace has called on other businesses to follow suit

Coles Group has announced targets to reduce greenhouse gas emissions including:

- sourcing 100% of its power from renewable sources by the end of FY2025
- reducing its Scope 1 and Scope 2 emissions by 75% (from a 2020 baseline) by FY 2030
- 'to deliver net zero greenhouse gas emissions by 2050'

Announcing the targets, Coles CEO Steven Cain commented,

> 'We have already reduced Scope 1 and Scope 2 greenhouse gas emissions by 36.5% since 2009 and have been a leader in securing renewable energy. Our new targets for Scope 1 and 2 emissions commit us to an accelerated reduction in greenhouse gas emissions that exceed the climate change ambitions of the Paris Agreement and will help sustain Australia for generations to come by working together with our customers, suppliers and members of the community.'

Greenpeace's Lindsay Soutar who is director of the group's Reenergise campaign – the Reenergise campaign calls on companies whose power usage is heaviest to commit to transitioning to 100% renewable energy - welcomed Coles' commitment commenting that,

> 'All three of Australia's biggest supermarkets have now committed to 100% clean electricity, meaning the goods and services Australians use every day will soon be brought to us by the wind and sun…The momentum behind Australia's business energy transition is undeniable, as company after company commits to 100% renewable electricity, and concrete action from companies like Coles puts them in front of the pack. Australian businesses have so far committed to enough renewable energy to power 1.6 million homes – that's almost every house in Sydney.'

Ms Soutar said that Coles' clean energy switch puts the pressure on other Australian businesses to suit.

Greenpeace Australia Pacific has called on Coles to become a signatory to the global RE 100 program.

[Sources: Coles media release 19/03/2021; Greenpeace media release 19/03/2021]

Transition commitments: AGL applies has provided update on battery commitments

As part of AGL's commitment to develop 850MW of grid-scale batteries by FY2024, the company has announced that it has:

- lodged an application for a 200MW, four-hour duration grid-scale battery at Loy Yang Power Station
- is 'developing' a 250MW battery at its Torrens Island power station, a 150MW battery at its Liddell power station and a 50MW battery in Broken Hill

The company is also 'supporting grid-scale battery projects' including Wandoan, Maoneng and Dalrymple.

AGL's Chief Operating Officer, Markus Brokhof said that battery projects will play an important role in shoring up reliability of supply.

> 'This project will play a critical role in transforming the reliability of renewables in Victoria, providing essential firming capacity and storage…It is through low emission firming technologies like batteries that we can create sustainable energy for our customers as well as deliver on our Climate Statement commitments which include net-zero emissions by 2050'.

[Source: AGL media release 23/03/2021]

How boards can strengthen their oversight of cyber risk: WEF report released

The World Economic Forum is cooperation with the National Association of Corporate Directors, the Internet Security Association, and Forum partners, has released a report – Principles for Board Governance of Cyber Risk – outlining six principles intended to assist boards to better understand, monitor and oversee cyber risk including suggested steps to take to strengthen their approach.

Six principles for strengthening cyber risk governance/oversight

PRINCIPLE	KEY CONSIDERATIONS FOR BOARDS
Cybersecurity is a strategic business enabler (not just an IT issue)	The report calls on boards to take a leadership role in addressing cybersecurity risks including through promoting a 'culture of cybersecurity' within their organisation and 'modelling' good cybersecurity decision making. From a practical standpoint, the report suggests that boards should (among other things): ▪ integrate consideration of cyber risk into strategic and operational decision making: eg by including cyber risk as a recurring agenda item at board meetings ▪ apply a broader strategic lens to the analysis of cybersecurity issues and ensure cybersecurity is considered as part of overall enterprise risk ▪ designate a board committee to have primary oversight of cyber risk issues ▪ ask executives to identify opportunities to use cybersecurity as a business driver/market differentiator
Understand the economic drivers and impact of cyber risk	The report comments that 'in order for organisations to make effective business decisions, risk determinations should focus on the financial impact to the organisation, including trade-offs between digital transformation and cyber risk'. To facilitate better decision making, the report suggests that boards should take steps to ensure management has (among other things): ▪ defined cyber-risk appetite levels in financial terms ▪ developed metrics to measure overall cyber-risk management performance ▪ used cyber risk scenarios that align with the organisation's risk profile to establish a risk appetite ▪ developed a framework, using industry-accepted risk quantification models for calculating the potential economic impacts/likelihood of cybersecurity scenarios ▪ provided the board with 'detailed rationales for the organisation's determination of materiality of risk including cyberrisk based on an indication of the risk's reputational, customer, financial and other relevant impacts as part of its regular risk management monitoring framework'
Align cyber-risk management with business needs	The report states that 'effective governance of any enterprise requires clear alignment between cyber-risk management and business objectives across every facet of decision-making' and with this in mind, boards 'should understand and assess how to effectively manage cyber risks in the pursuit of business objectives'. From a practical perspective, the report suggests that boards should (among other things): ▪ require senior leaders (the entire C-suite) to report to the board on both the cybersecurity implications of their activities and their role in countering adverse cyber events ▪ require management to integrate consideration of cyberrisk into significant business decisions (and to provide assurances of the information's quality and comprehensiveness) ▪ require management to provide the board with 'roadmaps on how the company makes determinations of risk materiality that inform regulatory obligations'
Ensuring organisational structure supports security and	The report states that organisations need to design internal governance structures to address cybersecurity on an organisation-wide basis. This should include clearly defining ownership, authority and accountability for critical risk management and reporting obligations. The report suggests that boards should (among other things):

PRINCIPLE	KEY CONSIDERATIONS FOR BOARDS
strategic goals	▪ ensure the cybersecurity function within their organisation is 'adequately represented' across the business ▪ set expectations that cybersecurity/risk functions are adequately resourced and monitor whether this is the case ▪ ensure an accountable officer has authority and responsibility to coordinate overall organisational cyber-risk strategy and that the organisation has a comprehensive plan for data governance ▪ challenge the assignment of important roles and lines of accountability for cybersecurity strategy, policy and execution where appropriate
Incorporate cybersecurity expertise into board governance	The report comments that 'boards need diverse sources of cybersecurity expertise' in order to execute their oversight role. The report suggests that boards should (among other things): ▪ 'build relationships with internal stakeholders who can provide expertise to guide strategic cybersecurity decisions, up to and including ensuring cyber expertise is represented on the board' ▪ take opportunities to increase individual directors' base knowledge on cyber risk ▪ supplement internal expertise with independent third party expertise to: – ensure effective oversight of management – (potentially) undertake periodic audits/reviews of cybersecurity strength and benchmarking – provide updates to the board on recent cybersecurity incidents, trends, vulnerabilities and risk predictions
Encourage systemic resilience and collaboration	The report comments that the 'highly interconnected nature of modern organisations' means that failures can rapidly spread beyond a single organisation to impact an entire sector or industry. On this basis, the report argues that boards should take steps to 'encourage collaboration across their industry and with public and private stakeholders to ensure that each entity supports the overall resilience of the interconnected whole'. The report suggests that boards should (among other measures): ▪ 'Develop a 360-degree view of the organisation’s risk and resiliency posture to operate as a socially responsible party in the broader environment in which the business operates' ▪ develop peer networks to share best governance practices and encourage management participation in industry groups and knowledge and information sharing platforms ▪ ensure management: – takes into account third party risk – has plans in place for 'effective collaboration especially with the public sector, on improving cyber resilience'

[Source: WEF report: Principles for Board Governance of Cyber Risk]

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