Governance News

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

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Meetings and Proxy Advisers

Shareholders back board-endorsed climate resolutions at Rio Tinto

Two shareholder ESG resolutions received near unanimous support at Rio Tinto's Australian AGM.

- The first resolution, coordinated by Market Forces, called for enhanced climate reporting in line with the Paris Agreement. More particularly, the resolution called on the company to disclose short, medium, and long-term targets for its scope 1 and 2 greenhouse gas (GHG) emissions and performance against those targets, with targets independently verified as aligned with Paris Agreement. The resolution was carried with 99.02% support.
- The second, coordinated by the Australasian Centre for Corporate Responsibility (ACCR), called for Rio Tinto to take a tougher line on membership of industry associations whose lobbying activities are inconsistent with the goals of the Paris Agreement. Specifically, the resolution called on the company to enhance its annual review of industry associations (to which it belongs) to ensure that any areas of inconsistency with the goals of the Paris Agreement are identified, and that where this is the case, membership is suspended. The resolution was carried with 99.04% support.

The Rio Tinto board advised shareholders to vote in support of both resolutions ahead of the meeting on the basis that the board considers the company's current approach is broadly consistent with the demands being made.

You can find the full text of both resolutions and details around the board's endorsement of both in Rio Tinto's addendum to the Notice of Meeting here.

BlackRock voted in support of both resolutions

- In a voting bulletin, BlackRock states that it voted in support of the resolution calling for enhanced climate disclosure because it considers the proposal to be 'consistent with our expectation that companies to disclose scope 1 and 2 emissions and accompanying GHG emissions reduction targets.'
- BlackRock also voted in support of the lobbying resolution, in line with the board's recommendation, 'to signal the importance of the opportunity for Rio Tinto to engage its trade associations to further advance their policy positions in support of the global energy transition. We believe that improved disclosures regarding the company's ability to influence its industry associations would help investors understand and assess the possible misalignment in public positions on key strategic policy issues with those of certain associations of which it is a member'.

Response – it's a start, but 'the real work starts here'

In a short statement acknowledging the result, Market Forces commented,

> 'The near unanimous vote is a win for its shareholders, but the real work starts here. While Rio has staved off a shareholder revolt this year, it is vital that investors ensure their frustration is heard by the company over the next year. With Rio committing to an advisory vote on its climate change report next year, there is no excuse for any investor to shirk its responsibility to demand much more ambition, and vote against the company next year if its targets still aren't up to scratch.'

Market Forces also raised concerns that despite the board's endorsement of the climate disclosure resolution, as yet, Rio Tinto has not committed to ensuring emissions reduction targets are independently verified as being aligned with the goals of the Paris Agreement. Further, Market Forces has called on Rio Tinto to set more ambitious emissions reduction goals.

Market Forces has flagged that a resolution calling on the company to 'manage' its Scope 3 emissions, and set targets for reducing these emissions has been lodged ahead of the 2022 AGM.

Remuneration report and director elections

- The resolutions to approve the remuneration report were not carried as ordinary resolutions. Resolution 4 (to approve the remuneration report for the purposes of Australian law) received 60.84% of votes against, constituting a first strike.
- Rio Tinto attributes this outcome to concern over the events at Juukan Gorge and more particularly, to the 'extent of the malus adjustment applied to unvested LTIP (long term incentive plan) awards of the former Chief Executive Officer, Chief Executive Iron Ore and Group Executive Corporate Relations' in response. This appears to be largely

consistent with the reasons given by the Australian Shareholders' Association for voting against the policy, and separately the reasons given for BlackRock's decision to vote against the resolution.

- Rio Tinto states that it has engaged extensively with shareholders on the issue and that the feedback provided has already been reflected in a new remuneration policy that will enable the board greater scope to apply downward adjustments in future. This plan was approved with 96.8% of votes in support. The company has also said it will continue to engage with shareholders on the issue ahead of the 2022 AGMs.
- The resolution to reelect Dr Megan Clarke to the board was carried with 73.52% of shareholder voting in support. In contrast, all other directors were reelected with less than 5% of votes against their reelection.
- Rio Tinto attributes this result to the fact that as Chair of the Sustainability Committee at the time of the destruction of the rock shelters at Juukan Gorge, some shareholders consider that she 'shares' accountability. Rio Tinto has said that in light of the fact that nearly 75% of shareholders voted in support of her reelection, and in light of the 'significant contribution, experience and continuity' Dr Clarke brings to both the Board and the Traditional Owners, the board considers that she should remain on the board at this time. Dr Clarke is overseeing the implementation of the board review recommendations into cultural heritage management. The board will continue to engage with stakeholders and will 'consider feedback' as the recommendations are implemented.

[Sources: Rio Tinto Addendum to Notice of AGM 19/03/2021; Rio Tinto Ltd Results of AGM 06/05/2021; Market Forces media release 06/05/2021; BlackRock voting bulletin; ASA voting intentions 05/05/2021; ACCR media release 19/03/2021; [registration required – accessed via LexisNexis Capital Monitor] ASA voting intentions]

Support for a shareholder climate resolution jumps to 21.39%, activists call on the insurer to take note

Shareholder resolution and voting outcome

Shareholder ESG resolutions coordinated by Market Forces and Australian Ethical called on QBE to:

- amend its constitution to enable shareholders to bring ordinary advisory resolutions to express an opinion/request information from the company (special resolution); and
- 'disclose, in subsequent annual reporting, short, medium and long-term targets to reduce investment and underwriting exposure to oil and gas assets, along with plans and progress to achieve the targets set' (ordinary resolution).

You can find the full text with accompanying supporting statements here.

- At the 5 May 2021 AGM, the constitutional amendment received 3.61% of votes in support (and failed to be carried). The ordinary resolution received 21.39% support (78.61% votes against).

In his address to shareholders, Chair of the QBE Insurance Group Michael Wilkins summarised the board's rationale for advising shareholders to vote against the resolution. In doing so he emphasised the 'strong progress' on climate commitments that have been made already by QBE as well as QBE's progress toward enhancing its disclosure in line with the Task Force on Climate-related Financial Disclosures recommendations.

Broadly, he said that though the Board 'acknowledges that climate change is a material risk for QBE' the board's position is that it is 'essential that we continue to work through our analysis and strategic decisions in a methodical and coordinated way'. In light of this, he said that the Board is of the view that shareholders should vote against the resolution to enable the company to pursue its climate strategy.

Market Forces has called on QBE to take note of the increase in support

Responding to the outcome, Market Forces welcomed the 'significant increase' in shareholder support for QBE to set Paris aligned oil and gas exposure targets, noting that in 2020 a similar resolution received only 13% support. Market Forces argues that this uptick in the level of support, and the questions from shareholders during the meeting, should signal to QBE, that a large minority of shareholders would like to see the company take a stronger line on its oil and gas exposure and transition planning.

[Sources: QBE 2021 AGM results; Chair's address to the AGM, Market Forces media release 05/05/2021]

Institutional investor support for a shareholder climate resolution at Barclays was well down on last year, environmental groups have described the drop in support as a 'major concern'

Shareholder resolution and voting outcome

- The resolution, coordinated by Market Forces, called on Barclays to set, disclose and implement a strategy with more ambitious short, medium and long term targets for phasing out its provision of financial services to fossil fuel projects and companies in timeframes consistent with those in the Paris Agreement. The resolution also called on the bank to report annually on progress, starting from 2022.
- The resolution was not supported by the Barclays board.
- The resolution received only 14% support.

Addressing shareholders at the meeting, neither the Barclays Chair nor CEO commented specifically on the resolution.

The Barclays Chair did however acknowledge the level of shareholder support for action on climate, and briefly outlined some of the bank's commitments in this area including Barclay's decision to align the bank's financing portfolio with the goals of the Paris Agreement, and its net zero by 2050 ambition.

He also outlined the steps the bank will take to expand on these commitments including enhanced analysis/reporting of the environmental impact of the bank's financing activity, and the introduction of a 'say on climate' advisory vote.

Likewise, he emphasised the bank's focus on social issues, and in particular on promoting increased diversity and tackling discrimination.

He closed his speech by observing that there will always be room for improvement in these areas.

> 'Please take these few words as a description of where we want to get to. Perhaps you never completely get there – whether on climate or diversity and inclusion – there is always more that can be done. However, I'm convinced that with this leadership team and the great colleagues around the world that Barclays will continue to do better for the communities which it serves and that that will underpin its success and value in the future'.

BlackRock abstained from voting on the resolution

In a voting bulletin, BlackRock explained that it abstained from voting on the resolution, despite 'being in agreement with the ask of the resolution, regarding closer alignment with the goals of the Paris Agreement' because of the ambiguity in the way it was drafted. BlackRock states,

> 'Ultimately, however, our decision to abstain from the vote on the resolution was down to its ambiguous wording which, as a legally binding resolution, BIS is unable to support. Specifically, it asks the bank to "phase out its provision of financial services (particularly its financing activities, including project finance, corporate finance and underwriting) to fossil fuel projects and companies in timeframes consistent with…the Paris Agreement." The term "financial services" is broad and includes many activities beyond those highlighted in the resolution's wording. So while this should be a precise and legally binding ask of the company, it is instead vague and left open to interpretation. In addition, the resolution is insufficiently specific on embedded timelines and evidence of progress. Such ambiguity creates a level of legal uncertainty in relation to the resolution's implementation for the bank, and the Board, and therefore for BlackRock's clients because, as drafted, the resolution leaves open to interpretation what specific actions the bank would need to commit to in order to abide by it. If 75% of the votes are cast in favor of such a resolution, it would pass and would bind the Board and the company as if it had the force of law. It is therefore critical for the interests of shareholders that any such resolution be clearly understandable, practical and implementable'.

Blackrock also raised concerns that the resolution was filed too close to the date of the AGM to enable sufficient time for engagement.

The bulletin goes on to explain that BlackRock did not vote against any members of the Barclays' board in this instance (which it describes as its 'standard course of action where we have significant concerns about a company's management of material ESG issues') because it considers that Barclays' climate strategy, disclosures and oversight is in line with BlackRock's expectations.

Response from BankTrack and Market Forces

In a joint statement, BankTrack and Market Forces have expressed their concern over the drop in the level of support (relative to last year) from institutional investors. BankTrack and Market Forces commented,

> 'Today's result is a major concern, as after last year's strong investor vote for greater climate action…Barclays' institutional investors have some serious questions to answer about their commitment to climate change action. Having seen Barclays' climate policies fail to reign in its investments in fossil fuels in the last year, to have investor support for climate change action drop this year compared to 2020 smacks of either indifference or incompetence from many major investors'.
>
> [Sources: BankTrack and Market Forces media release 06/05/2021; Barclays 2021 AGM Statements 05/05/2021; Barclays Results of AGM; BlackRock voting bulletin]

Related news: Activist Sherborne Investments has abandoned its long-running campaign to overhaul the bank

According to media reports (The Guardian; Reuters; Bloomberg) activist Sherborne Investments has abandoned its long-running campaign to overhaul the leadership and strategic direction of the bank, with Sherbone selling down its entire Barclays stake after failing to gain sufficient support for its proposed changes. S&P Global interprets this as a vindication of Barclays CEO Jes Staley's 'strategy of a diversified bank'.

> [Sources: The Guardian 07/05/2021; Reuters 07/05/2021; Bloomberg 07/05/2021]

Consultation on proxy reforms: Proxy Advisers flag concerns

Context

- The government recently released a brief consultation paper, seeking feedback on a five proposals/options that would both: a) tighten the current regulatory regime for proxy advisers in the context of providing proxy services to institutional investors; and b) increase transparency around how superannuation funds exercise their voting rights.
- Options being considered include: a) the introduction of new licensing requirements for proxy advisers; b) the mandatory provision of proxy advisers' reports to companies for a minimum period before distribution to subscribing investors (the consultation paper suggests a five day period may be appropriate); and c) a new requirement for proxy advisers to inform clients where company feedback in response to reports can be accessed.
- At this stage, the consultation paper states that its aim is only to 'assess the adequacy of the current regulatory regime and help develop reform options that would strengthen the transparency and accountability of proxy advice'.
- The due date for submissions to the consultation is 1 June 2021. You can find our summary of the proposals and the initial response from industry here.

Proxy advisers have raised concerns

Both Institutional Shareholder Services (ISS) and Glass Lewis have separately issued statements raising concerns about the proposed reform options and questioning the need for reform.

No rationale?

Both ISS and Glass Lewis have questioned the need for the changes, arguing that the government has put forward no concrete evidence to support the proposed reform options.

Head of Australia & New Zealand Research at ISS said Vas Kolesnikoff commented,

> 'The consultation seems to be premised on a misguided notion that proxy advisers do not operate transparently or engage with companies. In that sense we believe the potential regulatory options outlined in the public consultation are a solution in search of a problem. ISS is an independent and transparent organisation which goes to great lengths to ensure the quality and accuracy of our proxy research reports and which already has meaningful engagement with the companies that are the subject of those reports. Asset owners and other institutional investors should have the fundamental right to choose proxy advisers, use

independent research and implement voting policies appropriate to their individual stewardship needs without any limitations placed on them by the companies which they own and directors who they elect.'

Similarly, Glass Lewis states,

> 'we are concerned about the lack of any identified evidentiary basis for the proposed regulatory changes. While transparency, independence, and competence are all important attributes of proxy advice, the Consultation lacks any evidence of problems in these areas that it is trying to address'.

Both advisers are also concerned that the changes will compromise access to independent advice

Both ISS and Glass Lewis also raise concerns that the proposed changes will compromise investors' ability to access independent advice.

Glass Lewis observes that the same objections raised in the context of introducing similar reforms in the US context, apply in the Australian context. In particular, Glass Lewis views the proposal to require proxy advisers to provide companies with access to their report/recommendations, before providing it to their clients (option 3 in the government's consultation paper) as the proposal that 'presents the most obvious concerns'. This is chiefly because 'company pre-review of proxy advisor recommendations threatens to impair proxy advisor independence and the time institutional investors have to consider proxy advice, engage with companies, and determine how to vote'.

ISS appears to be of a similar view, stating:

> 'The consultation's suggestion that proxy advisers should be compelled to provide companies with a five day review and comment period prior to proxy advisers' reports being made available to their paying clients would be an unwarranted and inappropriate intrusion into the independent research process. On a more practical note, such a requirement would be an inoperable impediment to timely and effective investor stewardship and informed voting decision-making. ISS has a long standing practice of giving companies access, without charge, to their final, published report. Companies already have ample opportunities to communicate with their shareholders, including to advocate against the recommendations put forth by any proxy advisory firm. And ISS remains committed to immediately correcting any factual error which may influence a voting recommendation. To be clear, a difference of opinion with directors on matters of corporate governance does not constitute a factual error. We firmly believe all institutional investors should have an unfettered right to receive independent advice on their portfolio companies, a practice that would be harmed should Treasury push through these potential proposals.'

Glass Lewis has also questioned the thinking behind other proposed reforms – again, querying the evidentiary basis for considering them as well as raising questions about their impacts/how they would work in practice.

[Sources: ISS media release 05/05/2021; Glass Lewis media release 05/05/2021]

As You Sow Proxy Voting Guidelines 2021 released

As you Sow, in consultation with Proxy Impact, has released its Proxy Voting Guidelines for 2021.

Management Resolutions

The guidance sets out As You Sow/Proxy Impact's position on various 'typical' management resolutions proposed by companies eg director elections, auditor ratification and executive compensation. In addition, the guidance sets out As You Sow/Proxy Impact's position on other resolutions on specific issues such as stock options, take-over defence, and capital structures.

Below is a short overview of the position on board and auditor elections and executive compensation.

Boards and directors

Broadly, the guidance states that boards should:

- meet minimum gender and ethnically diversity requirements:
  - boards should have a target for women to hold a minimum of 30% of board seats (the guidelines recommend voting against the Board Nominating Committee if there are fewer than 30% women on the board)

- boards should also 'formally adopt a commitment' to board diversity in the broad sense (eg diversity of gender, race, ethnicity, sexual orientation and 'other federally protected classes). The hiring pool of prospective director candidates should include qualified candidates 'who are characterised by such diversity'.

- be independent in order to be able to provide 'proper oversight of management'
- establish policies that ensure: a) long-term shareholder value; b) ethical behaviour; c) good governance; and d) a commitment to sustainability
- be held accountable for its actions, the actions of its committees and the actions of the CEO (as the CEO reports to the board)

Opposing individual directors

- The guidelines advise that the election of a director will be opposed where (among other things) the director:
  - sits on three other public company boards
  - attends less than 75% of board meetings (without a valid excuse)
  - is the CEO or audit committee member of a company 'that required a financial restatement due to fraud, misrepresentation, significant noncompliance, or accounting errors'
  - has served on the board of a poorly performing company (ie a company whose stock performance has ranked in the bottom 25% of the sector for the last three year period).
  - is a CEO who also serves as the board chair (on independence grounds)
  - is an 'insider or affiliate director' who sits on key board committees such as the compensation, audit, and nominating committee (on independence grounds)
  - is a compensation committee member who also serves as CEO of any public company (on independence grounds)

Opposing the election/reelection of committee members

- Nominating committee members will receive an against vote where they nominate the CEO to serve as board chair, or nominate a slate of directors that lacks gender or racial diversity
- Compensation committee members will receive an against vote where they: a) have proposed compensation packages that fail to link pay to performance; b) offer 'excessive golden parachutes' or severance packages; c) fail to take action to adjust remuneration plans following say-on-pay resolutions that received less than 70% support; or d) if they fail to adjust pay practices where the company CEO is included on the list of the 100 Most Overpaid CEOs.
- Audit committee members will receive an against vote if they recommend auditors that: a) received more than 25% of total auditor fees for non-audit work over the past year; and/or b) require an alternative dispute resolution (ADR) clause in audit contracts.
- Governance or public policy committee members will receive an against vote where their recommendations on shareholder resolutions are in opposition to shareholder resolutions that received at least 30% support the previous year.
- The guidance also states that votes for the entire board will be withheld in certain circumstances eg where the board fails to act on a shareholder resolution that received a majority vote.

Auditors

- The guidance states the ratification of the auditor will be opposed where: a) non-audit consultant fees are more than 25% of the total fees paid to the auditor during the previous fiscal year; b) the audit requires the company to sign an arbitration agreement; and/or c) the same auditor or firm has been hired for five (or more) consecutive years.

Executive and director remuneration

Broadly, executive compensation is expected to be 'appropriately linked to company performance', not to be 'excessive' and sufficiently transparent to enable shareholders to understand how compensation decisions are made.

- Say on pay (advisory vote to approve executive compensation): Say on Pay resolutions will be opposed where:
  - the short-term incentive program or long-term incentive program thresholds and maximums are not 'sufficiently disclosed'
  - discretionary cash bonuses are not based on any performance criteria

- an executive chair has a similar level of compensation to the CEO
- where there is a 'significant' pay disparity between the CEO and the next highest paid executive
- where the CEO is paid more than 100 times what the median employee is paid (without a 'persuasive explanation' justifying why this is necessary)
- where 'excessive' perks – perks over $50,000 – are included in executive compensation packages (as these are not based on performance)
- where there is not enough emphasis on long-term performance: eg where long-term incentive plans have a performance cycle of less than three years, there is no mechanism to clawback variable remuneration; or there are insufficient holding period requirements.

Shareholder Proposals

The Guidance also sets out As You Sow/Proxy Impact's position on supporting/opposing shareholder resolutions dealing with a range of ESG related topics.

Resolutions dealing with environmental issues is the largest category and resolutions dealing with wide range of topics including: climate change, land use, toxicity control, water management, forestry, waste reduction, and reduction of agriculture impacts as well as resolutions calling for increased and more detailed quantitative data tracking the progress companies are making against their commitments.

Among other things, the guidance confirms support for shareholder climate resolutions seeking that companies:

- link executive compensation to the achievement of environmental targets;
- allow shareholders an advisory 'say on climate'
- report on the alignment of company operations/activities with the goals of the Paris Agreement
- climate-related lobbying resolutions (ie resolutions seeking regulator reporting on the alignment between lobbying activities and climate goals)
- provide detailed information about (among other topics): the risk a warming climate poses to business operations; their emissions reduction targets; energy related targets; and financing of fossil fuel activities/projects.

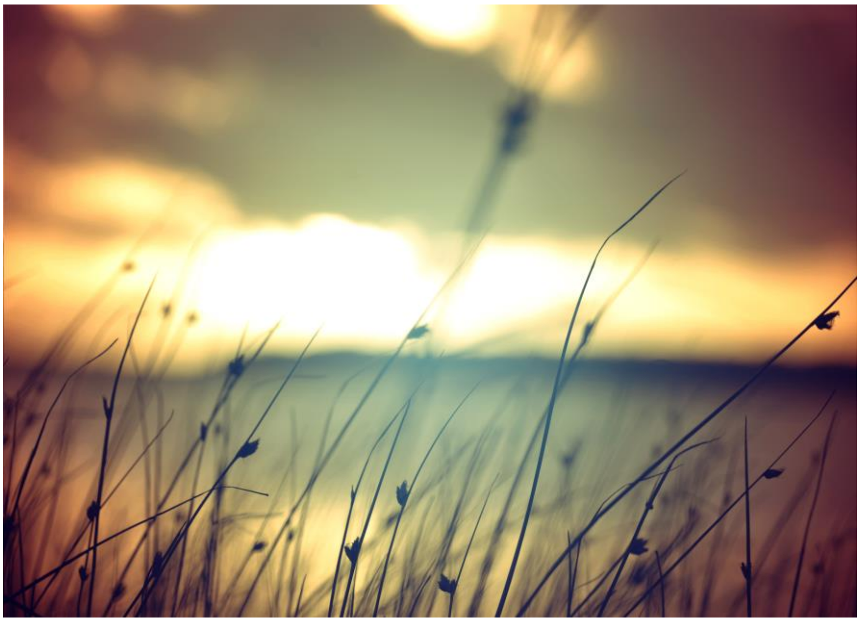
Position on 'Trojan horse' resolutions

The guidance makes clear that certain shareholder resolutions, often filed by groups/individuals in support of 'free enterprise policies' or 'conservative' values, for example resolutions which perpetuate climate denialism or an anti-gay stance will be opposed.

[Source: As You Sow Proxy Voting Guidelines 2021]

Shareholder Activism

At risk of being accused of 'woke washing'? American Express shareholders endorse calls for enhanced disclosure of the actions being taken by the company to support diversity



As You Sow reports that a majority of American Express investors have voted in support of a shareholder resolution calling on the company to report on its diversity and inclusion efforts. As a minimum, the resolution (full text here) states that the report should include:

- The process used by the board to assess effectiveness of the company's diversity, equity and inclusion programs;
- The Board's assessment of the programs' effectiveness, 'as reflected in any goals, metrics and trends related to its promotion, recruitment and retention of protected classes of employees'.

The resolutions was filed following the company's strong public statements in support of racial justice following the events of 2020, including the following statement from the company's Chair.

> 'American Express has a long-standing commitment to fostering an inclusive and welcoming workplace that reflects the diversity of the customers and communities we serve. Central to this commitment is standing up against racism and eliminating barriers that have prevented people of all racial, ethnic, and gender identities from having equal opportunities to pursue their aspirations'.

According to As you Sow, investors are concerned about what they perceive to be a lack of alignment between the company's public statements on the issue, and the actions it is actually taking to address it/the lack of disclosure around those actions.

As You Sow comments that,

> 'A company that makes strong statements in support of racial justice but is not able to show that its own actions are aligned with stated values is at risk of being accused of "woke washing". Woke washing refers to brands that are performative in their commitment to social justice and is defined by urbandictionary.com as "using social justice as a marketing strategy".'
>
> [Source: As You Sow media release 04/05/2021]

Activist investor coalition withdraws obesity resolution at Tesco following commitments by the company to set targets to increase its sales of healthier food/drink options

- A shareholder resolution, calling on Tesco to take action to help tackle the obesity crisis by promoting sales of healthier food/drinks through its retail stores, was filed in February this year.
- Broadly, the resolution called on Tesco to: a) publicly disclose the total volume of sales of healthier products; b) develop a strategy to significantly increase this volume by 2030; and c) report annually (from 2022 onwards) on the progress.

- The resolution was coordinated by a £140bn coalition of seven institutional investors – the Healthy Markets Coalition - led by ShareAction, that is pushing for the adoption of health commitments by the grocery sector.
- ShareAction has announced that following successful engagement with Tesco, which resulted in the company making various health commitments, the resolution has been withdrawn.
- Specifically Tesco committed to:
  - Increase the share of its UK and ROI sales derived from healthier food and drink products from 58% to 65% by 2025
  - Increase sales of healthier food and drink products in its Central European business, on a similar trajectory to UK and ROI, including formulating specific targets by the end of 2022. This will include a specific sub-target to increase sales of plant-based meat alternatives by 300% by 2025 in these countries
  - Encourage Booker consumers (consumers who shop at smaller local shops) to choose healthier options by increasing ranges of healthier products available, and nutritional information provided via labelling and online
  - A two-year process of engagement with the Healthy Markets Coalition while it is implementing the new commitments.

[Sources: ShareAction media release 05/05/2021]

Shareholder supply chain risk resolution withdrawn after Kraft Heinz agrees to shareholder demands

- A shareholder supply chain risk resolution at Kraft Heinz has been withdrawn by shareholders ahead of the AGM, after the company agreed to shareholders' demands.
- The resolution which was filed by members Interfaith Center on Corporate Responsibility (ICCR), called on the company to publish a Human Rights Impact Assessment to 'mitigate against significant operational, financial, and reputational risks associated with negative human rights impacts throughout its supply chain'.
- Kraft Heinz has agreed to conduct the assessment, consistent with the UN Guiding Principles on Business and Human Rights, as requested.

[Source: Interfaith Center on Corporate Responsibility media release 05/05/2021]

Successful engagement: Activists secure commitments to reduce the use of virgin plastic from five companies within three months

- As you Sow and Green Century Management have agreed to withdraw a resolution filed at Target Corporation, following agreement by Target to set a 'virgin plastic elimination goal' for its private brand packaging, including packaging in the food and beverage, household cleaning, personal care and beauty product segments.
- Target is expected to announce the size and scope of its reduction target in the company's next corporate social responsibility report. According to As You Sow's statement, the elimination targets are expected to be achieved through reducing the use of virgin plastic material, discarding unnecessary packaging, redesigning packaging, and 'exploring reuse models'.
- The resolution was filed as part of a broader campaign targeting a number of companies over their use of virgin plastic. Commenting on this Senior Vice President of As You Sow Conrad MacKerron said,

  'Securing virgin plastic reduction commitments from five companies within three months is promising, but the work can't stop here. We hope to see Target build toward absolute cuts in plastic use across all its private brands in the future. Many more companies need to step up and make significant cuts in use of plastic for single-use packaging.'

  [Source: As You Sow media release 05/05/2021]

Institutional Investors and Stewardship

Stepping up stewardship activity (especially on climate issues): BlackRock's Q1 2021 stewardship report released

Key Takeouts

- As compared with last year, that there was a 52% increase in engagement on environmental issues
- Over Q1 2021, BlackRock voted against 53 directors and 47 companies to register concern around what it considers to be inadequate progress on management of material climate risks (up from 64 directors and 69 companies over the whole 2020 calendar year). This number is expected to increase over the course of the proxy season.
- BlackRock has supported 75% of environmental and social shareholder proposals including proposals asking companies to conduct racial equity audits and votes on climate action plans ('say on climate').

BlackRock's latest stewardship report for Q1 2021 tracks the increase in its stewardship activities – chiefly, its voting decisions and engagement activity over the period - and highlights particular areas of increased focus. Overall, the key message in the report is that BlackRock's activity has substantially increased and its focus on management and disclosure of climate risk has sharpened as compared with last year.

Key Takeaways

- **BlackRock engaged with more companies in Q1 2021:** Over the period January 1 to March 31, 2021 BlackRock conducted 992 engagements with 841 individual companies in 49 markets. According to the report, this represents a 24% increase in engagement activity (year on year)
- **Engagement across BlackRock's five priority areas:** The report states that the increased level of engagement reflects BlackRock's 'accelerated efforts to inform boards and management teams' of its increased expectations across its five engagement priorities for 2021:1) climate and natural capital; 2) board quality and effectiveness; 3) strategy, purpose and financial resilience; 4) incentives aligned with value creation; and 5) company impacts on people.
- **Uptick in protest votes against individual directors:**
  - The report reiterates that where BlackRock considers that companies are not appropriately addressing material risks (and therefore not acting in the best interests of shareholders), BlackRock's 'most frequent course of action' will be to register concern through voting against the reelection of individual directors.
  - Over the course of Q1 2021, BlackRock voted against 1,196 directors at 549 companies to register concern around a range of issues including: lack of independence; lack of alignment between executive compensation and long-term performance; lack of diversity; and 'other business practices inconsistent with sustainable long-term financial performance'. Lack of independence was the most common reason for voting against an individual director, followed by poor general disclosure and lack of alignment between executive pay and long term performance.
- **Uptick in support for shareholder proposals:** From July 2020, BlackRock implemented a new approach to shareholder proposals. Under the new approach, BlackRock will support shareholder proposals where it: a) agrees with the intent of the proposal; b) the proposal addresses a material business risk; c) considers management could improve their management/disclosure of that risk managing and disclosing that risk. BlackRock may also support a proposal if it considers that management is 'on track', but where voting in support of the shareholder proposal could accelerate progress. Consistent with this approach, in Q1 2021, BlackRock voted in support of 12 of 16 environmental and social shareholder proposals.

Looking more closely: Increased focus on environmental issues translates into increased engagement and voting behaviour

- As compared with last year the report states that there was: a 52% increase in engagement on environmental issues (year on year); an 11% increase on governance issues; and a 10% increase in engagement on social issues.

- Over Q1 2021, BlackRock voted against 53 directors and 47 companies to register concern around what it considers to be inadequate progress on management of material climate risks (up from 64 directors and 69 companies over the whole 2020 calendar year). This follows putting 191 companies 'on watch' in 2020 for potential voting action in 2021 (if they failed to make 'significant progress on their management and reporting of climate related risks). The report cites this as evidence of BlackRock's commitment to following through on its stated aim of holding companies more accountable on the issue. BlackRock expects that this number will 'increase meaningfully as we go through the peak proxy season, which runs March through June in most markets'.
- BlackRock has supported 75% of environmental and social shareholder proposals including proposals asking companies to conduct racial equity audits and votes on climate action plans ('say on climate'). BlackRock comments that the proposals reflect the heightened focus that shareholders have on a company's approach to diversity/inclusion and climate, an emerging theme that BlackRock says it will continue to monitor/report on in its next report.

Engagement by region:

- Total engagements in Europe, Middle East, and Africa (the EMEA) increased 157% as compared with Q1 2020.
- Total engagements in the Americas and Asia-Pacific (APAC) regions were relatively consistent year-on-year. The report comments that the uptick in climate and sustainability related engagements replaced the COVID-19 related engagements that were the focus in Q1 2020.

Engagements with APAC companies – BlackRock observed 'notable improvements' in disclosure

- Management and disclosure of climate risk was a key focus of engagement with APAC companies. For example, topics discussed included:
  - companies' strategies for transitioning to a low-carbon economy
  - TCFD reporting ie whether they are committed to TCFD-aligned reporting, and the extent to which they are already aligned with the four pillars of the TCFD
  - how companies are aligning their approach to their respective national and international goals to address climate risk.
- According to the report, these engagements revealed that that many companies have made 'notable year-on-year progress' on the issue. For example, a Malaysian shipping company published a TCFD-aligned sustainability report in 2021, shared its decarbonisation strategy and plans to align with the International Maritime Organization's 2050 decarbonisation target. The same company's integrated report is now aligned to SASB standards and mentions a commitment to be TCFD-aligned by 2022. It had also appointed a Chief Sustainability officer. The report comments that though there is still room for improvement, there is evidence that companies are overall demonstrating a commitment to manage, oversee and report on climate-related issues.
- According to the report, BlackRock has found that more broadly, APAC companies have made 'significant progress' toward 'accelerating disclosure efforts in alignment with the TCFD framework and the SASB standards'. This is borne out by SASB reporting data that shows that after the US and Canada the APAC has the highest number of unique SASB reporting companies for 2020.
- Based on engagement with APAC countries in Q1 2021 more broadly BlackRock 'believes there are notable improvements being made' and 'we expect accelerated progress in the coming months. However, we will continue to monitor the progress of the companies in the region, particularly those in the BIS Climate Focus Universe and take voting action where we observe a lack of progress'.

Engagement activity in Australia

- The report highlights various activities BlackRock undertook during the period with the aim of driving progress on increased transparency, protection of shareholder interests and engagement on ESG.
- Activities highlighted in the report include:
  - Making a submission to the Australian Prudential Regulation Authority (APRA) on its revised remuneration standard (CPS 511). Broadly, BlackRock states that it agrees with 'APRA's aim of ensuring that an entity's remuneration arrangements produce appropriate incentives and outcomes and appreciated the opportunity to contribute to this conversation'.
  - Attending various local industry events to share its views on the role of engagement in furthering progress on ESG issues and participated in panel discussions to share BlackRock's engagement priorities, approach to stewardship and risk.

[Source: BlackRock Investment Stewardship Q1 2021 Global Quarterly Report May 2021]

Other Shareholder News

2021-22 Budget: Deregulation measures include funding to modernise business communications

The government has allocated $134.6 million over four years from 2021 22 to progress its deregulation agenda. The aim is to reduce the 'unnecessary regulatory burden and support Australia's economic recovery by making it easier for businesses to get people into jobs and interact with government'.

Some initiatives to note include:

- $10.0 million over four years from 2021 22 'to modernise business communication by amending legislation in the Treasury Portfolio to be technology neutral'
- $3.9 million over two years from 2021 22 'to enable reviews to increase the transparency and accountability of regulator cost recovery activities and reduce cost to business on an ongoing basis'

In a statement, Governance Institute CEO Megan Motto welcomed the strong focus on deregulation in the budget.

> 'We welcome this funding which is an important steppingstone in bringing Australia's business landscape into the 21st century'
>
> [Sources: Federal Budget 2021-22; Governance Institute media release 11/05/2021]

Financial Services

Top Story | A welcome development: FFSP Restoration

The MinterEllison team discusses the 2021-22 Federal Budget measure to restore relief for Foreign Financial Service Providers (FFSPs).

You can access the article here.

ASIC Quarterly Update Q1 2021: A recap of ASIC's work in key areas over the opening quarter of 2021

Key takeaways: ASIC Report 690 ASIC Quarterly Update: January to March 2021 (REP 690)

Australian Securities and Investments Commission (ASIC) Report 690 ASIC Quarterly Update: January to March 2021 (REP 690) provides a recap of ASIC's work in key areas during the period 1 January 2021 to 31 March 2021.

- Supporting Australia's economic recovery from COVID-19 remained a key focus for the regulator in Q1 2021. The report highlights the following actions as examples of this:
  - ASIC's 29 March 2021 announcement of its 'no-action' position on convening/holding virtual meetings
  - The release of guidance for small business directors about new insolvency reforms
  - The release of 'targeted resources' to assist consumers impacted by natural disasters to support them in understanding how to lodge insurance claims, avoid scams and apply for financial assistance
  - Continued industry supervision of life and general insurers to review/monitor their response to customers experiencing financial hardship caused by the pandemic. ASIC states that this supervision (which commenced in June 2020) has involved direct engagement with major insurers to help 'ensure they were doing everything possible to help consumers in times of need'.
- ASIC's new role as the conduct regulator in superannuation: The report cites the following as examples of the work ASIC being doing, working closely with the Australian Prudential Regulatory Authority, to 'drive good conduct in the superannuation'. Actions cited in the report include:
  - Commencing proceedings (separately) against two superannuation funds for (allegedly) making misleading and deceptive representations to members.
  - Working closely with/collaborating with APRA to ensure an 'integrated' approach
- Consumer and investor protection:
  - Consistent with ASIC's Corporate Plan - ASIC's Corporate Plan 2020–24 – which identifies protecting consumers as a priority, ASIC continued to focus on addressing: misleading and deceptive advertising, false and misleading conduct, predatory lending, acting against scams, and mitigating cyber risk including pursuing court based outcomes where appropriate.
  - On the topic of cyber risk, the report underlines ASIC's focus on ensuring regulated entities are aware of the risk and actively taking the necessary steps to manage it. ASIC comments that it will continue to take enforcement action should entities fail to manage these risks effectively.
- Making use of new regulatory tools:
  - Using the product intervention power: The report highlights examples of instances in which the regulator has used its product intervention power. These include making a product intervention order banning the sale of binary options to retail clients (which took effect on 3 may 2021) and previously, the product intervention order imposing conditions on the issue and distribution of contracts for difference (CFD) to retail clients (which took effect on 29 March 2021).
  - Supporting preparations for new Product Design and Distribution Obligations (DDOs): Regulated entities that distribute financial or credit products will need to comply with new DDOs from 5 October 2021. The report highlights ASIC's efforts to encourage firms to discuss their proposed approach with the regulator to ensure preparations are complete before October.
  - Supporting the implementation of the deferred sales model for add-on insurance ahead of the 5 October 2021 commencement: ASIC released CP 339 on 11 March 2021 seeking feedback on draft regulatory guidance explaining the scope of the deferred sales model, the obligations on add-on insurance providers and ASIC's power to grant an individual exemption. The consultation paper also outlined ASIC's proposals around the communication of information to customers before the commencement of the deferral period.

[Sources: ASIC media release 06/05/2021; ASIC Report 690: ASIC quarterly update: January to March 2021 (REP 690)]

Consultation on further changes to APS 111 Capital Adequacy: Measurement of Capital

- In October 2019, the Australian Prudential Regulation Authority (APRA) released a Discussion Paper, outlining proposed changes to APS 111 Capital Adequacy: Measurement of Capital (APS 111) for consultation.
- On 10 May, APRA released a response paper outlining:
  - its response to the issues raised during the consultation (Chapter 2 of the response paper)
  - explaining the rationale behind further proposed revisions to the standard (Chapter 3 of the response paper).

APRA has also released a revised draft standard for consultation. A marked up copy of APS 111 is here.

Changes

Broadly, the revised draft standard would:

- introduce changes to the capital required to be held by ADIs for their banking an insurance subsidiaries. In effect, the change will increase the amount of capital required to support equity investments in large subsidiaries while reducing the amount required for small subsidiaries (though APRA comments that this is not expected to increase overall system capital requirements). The purpose of the change is to 'reinforce financial system resilience'. APRA describes this as the 'most material change to APS 111'.
- remove complex issuance structures (eg special purpose vehicles) to 'promote simple and transparent capital issuance'
- clarify various aspects of the standard, including clarifying that Common Equity Tier 1 (CET1) capital is 'not permitted to have any unusual features that could undermine its role as the highest quality loss absorbing capital'.

Timing

- The deadline for submission is 10 June 2021.
- APRA expects to finalise changes to APS 111 in the second half of 2021, with the revised standard coming into force from 1 January 2022.

[Source: APRA media release 10/05/2021]

ASIC has granted temporary relief from certain dollar disclosures in PDSs for litigation funding schemes

- ASIC Corporations (Amendment) Instrument 2021/292 amends ASIC Corporations (Disclosure in Dollars) Instrument 2016/767 (Dollar Disclosure Instrument) to grant responsible entities of registered litigation funding schemes temporary relief from the requirement to disclose certain sensitive information in dollar terms in the scheme's Product Disclosure Statement (PDS). This information includes: the funding budget; legal costs budget; adverse costs insurance premiums; estimated funding; estimated legal costs and estimated claim proceeds.
- The temporary relief is only available in circumstances where the information has been separately disclosed in writing or electronically to all known members of the litigation funding scheme.
- The relief commenced on 28 April 2021 and operates for a period of 12 months.
- The rationale for granting the relief is that ASIC considers that 'public disclosure of this information is strategically sensitive in the context of litigation and, in the unique context of litigation funding, may not be in the interests of scheme members'.
- The decision is also, ASIC comments, consistent with the practice of courts to permit the non-disclosure of this information to opposing parties in class actions in light of the fact that the information could provide a tactical advantage to opposing parties.
- ASIC states that the relief was granted following an application for relief from the Association of Litigation Funders of Australia (ALFA), an industry body representing a range of litigation funders operating in Australia.
- Next steps: ASIC states that 'the temporary relief has been provided ahead of a public consultation about the continuation of the relief. ASIC expects to conduct the public consultation later this year'.

[Source: ASIC media release 10/05/2021]

APRA confirms changes to ADI quarterly reporting due dates following consultation

- APRA released a response letter to submissions on the proposed standardisation of quarterly reporting due dates for authorised deposit-taking institutions (ADIs).
- APRA has confirmed that it will implement the due date of 35 calendar days after the reporting period for all quarterly reporting forms, except for the modernised Economic and Financial Statistics (EFS) reporting forms.
- A full schedule of schedule of revised quarterly ADI and RFC reporting due dates is included in an appendix to APRA's letter to industry and is available on the APRA website here.

[Source: Response to submissions - proposed changes to ADI quarterly reporting due dates 11/05/2021]

In Brief | Treasury is consulting on various 'proposed minor and technical amendments' to the Treasury portfolio laws aimed at ensuring they operate as intended by 'correcting technical or drafting defects, removing anomalies and addressing unintended outcomes'. The deadline for submissions is 25 May 2021

[Sources: Treasury Consultation: Miscellaneous amendments to Treasury portfolio laws 2021]

In Brief | LIBOR transition: The UK government plans to being forward legislation (when parliamentary time allows) to 'reduce disruption that might arise from LIBOR transition with regard to the potential risk of contractual uncertainty and disputes in respect of contracts that have been unable to transition from LIBOR to another benchmark (so-called "tough legacy" contracts), where the FCA has exercised the powers given to it in the Financial Services Act'

[Source: HM Treasury media release 07/05/2021]

In Brief | The Monetary Authority of Singapore (MAS) is consulting on proposed amendments to the Guidelines on Corporate Governance for Designated Financial Holding Companies, Banks, Direct Insurers, Reinsurers and Captive Insurers which are incorporated in Singapore. The deadline for submissions is 18 June 2021

[Sources: MAS media release 07/05/2021; Consultation paper: Revisions to the Guidelines on Corporate Governance for Designated Financial Holding Companies, Banks, Direct Insurers, Reinsurers and Captive Insurers which are incorporated in Singapore]

Accounting and Audit

Auditor independence: New instrument grants relief from reporting minor financial interests

- ASIC Corporations (Auditor Independence) Instrument 2021/75 provides relief to the lead auditor from reporting minor financial interests in an entity audited by an audit firm, where the interest is held by any other partner of the firm or their close family members.
- In order to be eligible for relief, the 'fair value of the financial interest must not exceed $10,000 and the holder of the interest must not have been aware that is was a financial interest in the auditor entity or a controlled entity at the time that the breach occurred. The relief is not be available for financial interests held by the lead auditor, review auditor, a member of the audit engagement team, or any of their immediate family'.
- Section 307C of the Corporations Act 20101 (Cth) (the Act) requires an auditor to provide a declaration to the directors of a company stating compliance with the independence requirements of the Act and requirements of APES 110 Code of Ethics for Professional Accountants (including Independence Standards). The instrument relieves the lead auditor for the audit from reporting certain minor inadvertent breaches of a professional code of ethics in the auditor's independence declaration.
- The instrument is now in force and will be repealed on 30 April 2026.

  [Source: ASIC Corporations (Auditor Independence) Instrument 2021/75]

Risk Management

Top Story | Royal Commission: Aged Care Quality and Safety – challenges for Aged Care boards

Following the release of the Royal Commission's Final Report, MinterEllison has published a range of resources discussing the challenges and opportunities facing the sector, including challenges for boards.

- Partner Siobhan Doherty discusses the statutory non-delegable duty of care for aged care boards and directors and how to apply it.
- Chair of Mercy Health Australia, Virginia Bourke, discusses how aged care organisations can navigate the new governance standard.
- Executive Director, UnitingCare (NSW/ACT) Tracey Burton discusses how organisations can develop a quality and safety, as well as the compliance process.

You can find the recordings and other resources here.

2021-22 Budget: Funding for the implementation of the government's response to the Respect@work report and measures to address gender inequality

Responding to the Respect@Work report

The government has allocated additional funding over four years to implement its response to the Respect@Work Report. This funding includes:

- $9.3 million over four years from 2021 22 to support the implementation of the Government's response; including for the Respect@Work Council Secretariat
- $6.0 million over four years from 2021 22 to the Workplace Gender Equality Agency and the Australian Public Service Commission to strengthen reporting on sexual harassment prevalence, prevention and response
- Funding for additional legal assistance for specialist lawyers with workplace and discrimination law expertise. As part of this measure, Comcare will provide sexual harassment education to Workplace Health and Safety (WHS) inspectors and employers within the Commonwealth WHS system.

$3.4 billion in funding to increase women's workforce participation and economic security

In addition, the budget includes a number of other measures aimed at supporting women's participation in the workforce (primarily through more generous childcare subsidies) and helping to ensure their physical safety from violence/support them in accessing support services. Funding includes:

- $1.8 billion over five years from 2020 21 to 'improve women's workforce participation and economic security', including $1.7 billion over five years from 2021-22 (and $671.2 million per year ongoing) through increasing the child care subsidy and removing the annual cap of $10,560 per year per child.
- $998.1 million over four years from 2021 22 (and $2.3 million in 2025 26) has been allocated to initiatives to reduce Family, Domestic and Sexual Violence (FDSV) against women and children and support the victims.
- Funding of $320.1 million over four years has been allocated to support services that assist vulnerable women and children to engage with the legal system, increase access to Children's Contact Services and support the development of improvements in the legal system in dealing with FDSV.
- The government also intends to remove the $450 per month minimum threshold for superannuation guarantee eligibility: This measure is intended to improve equity in the superannuation system by expanding the superannuation guarantee coverage to workers on lower incomes, many of whom are women.

Initial response

- Commenting briefly on measures to increase women's workforce participation, Governance Institute CEO Megan Motto said that the 'initiatives represent productivity boosting measures that essentially assist all parents to participate more fully in the workforce'.

- Similarly, The Business Council of Australia has welcomed the measures describing them as a 'crucial step to fixing the barriers to women who want to work more hours or work extra days and boost economic growth'.
- Commenting broadly on the increased focus on women in the budget overall, CEO of Chief Executive Women Sam Mostyn expressed support for the measures, describing them as an 'encouraging and a positive step towards building a smart economy that delivers and maximises the potential of all Australians'. Ms Mostyn also welcomed the Women's Budget Statement as a 'good first step towards considering the measures impacting women across the budget'. Having said this, Ms Mostyn flagged that the CEW intends to continue to advocate for further reforms to address barriers to women's workforce participation and looks forward to the next budget going further.

[Sources: Budget 2021-22; Governance Institue of Australia media release 11/05/2021; Business Council of Australia media release 11/05/2021; CEW media release 11/05/2021]

Cybersecurity, Privacy and Technology

Top Story | The ACCC continues its foray into data privacy in ACCC v Google

On 16 April 2021, the Federal Court of Australia handed down its decision in Australian Competition and Consumer Commission v Google LLC (No 2) [2021] FCA 367 (ACCC v Google). The Court found that the ACCC had successfully shown that Google had misled consumers in the collection of their location data through Android devices.

The MinterEllison team has prepared a case note summarising the decision and providing insights into its practical implications. This can be accessed here.

NSW to become the first Australian state or territory to introduce a mandatory notification of data breach scheme? NSW government consults on new data breach notification Bill

The NSW government is consulting on draft legislation - [draft] Privacy and Personal Information Protection Amendment Bill 2021 – that proposes to introduce new mandatory data breach notification requirements for NSW public sector agencies.

Key Points

Broadly, the draft Bill proposes to:

- Introduce a Mandatory Notification of Data Breach Scheme (MNDB scheme) requiring NSW public sector agencies bound by the Privacy and Personal Information Protection Act (1998) (PPIP Act) to notify the Privacy Commissioner and affected individuals of data breaches of personal/health information if the breach is 'likely to result in serious harm'.
- Extend the application of the PPIP Act to all NSW State Owned Corporations (SOCs) that are not regulated by the Commonwealth Privacy Act 1988
- Repeal s117C of the Fines Act 1996, to ensure that all NSW public sector agencies are regulated by the same mandatory notification scheme

It's proposed that the Information and Privacy Commissioner NSW will play a role in the implementation and administration of this scheme.

Announcing the consultation, NSW Attorney General Mark Speakman said,

> 'The protection of people's privacy is crucial to public confidence in NSW Government services…If passed, this Bill will introduce a scheme that will ensure greater openness and accountability in relation to the handling of personal information held by NSW public sector agencies'.

Consultation closes 18 June 2021.

[Sources: Joint media release: NSW Minister for Digital, Minister for Customer Service, NSW Attorney General, Minister for the Prevention of Domestic Violence 07/05/2021; Consultation home page; Draft Bill: Privacy and Personal Information Protection Amendment Bill 2021; Fact Sheet]

Budget 2021-22: The government has announced a $1.2 billion Digital Economy Strategy

The Government will provide $1.2 billion over six years from 2021 22 (including $127.7 million in capital funding over two years from 2021 22) for the Digital Economy Strategy which will target investment in emerging technologies, building technology skills, encouraging business investment and 'enhancing government service delivery'.

Funding commitments include the following.

Acceleration of the expansion of the CDR

The 2021-22 Budget Digital Economy Strategy includes $111.3 million over two years from 2021-22 to accelerate the rollout of the Consumer Data Right (CDR) beyond the banking sector to the energy sector and the telecommunications sector with the goal of rolling it out 'across the economy' to other sectors in time.

More particularly, the funding is intended to enable (among other things):

- delivery of the rules and standards to implement the Consumer Data Right in the energy sector in 2021 and for the sharing of energy data in 2022
- the assessment and designation of telecommunications as a Consumer Data Right sector
- delivery of a roadmap for the economy wide rollout of the CDR
- for the expansion of international engagement 'to export Australia's data portability framework prompting an interoperable and rules-based approach to international consumer data portability frameworks and providing offshore opportunities for Australian technology companies to scale globally'.

Other planned measures include (among others):

- Over $100 million in funding to build digital skills capability including funding a new work-based pilot program for digital cadetships and scholarships for emerging technology graduates.
- $124.1 million in funding to increase Australia's artificial intelligence capability
- $200.1 million in funding to overhaul/upgrade myGov
- $301.8 million in funding to upgrade the My Health Record and an expand of the digital identity system.
- Over $50 million in funding to enhance cyber security in government, data centres and future telecommunications networks.

More detail about the Digital Economy Strategy is available here or in the Budget Papers here.

In a statement, welcoming the announcement the Business Council of Australia stated that the new strategy 'will help put Australia on the path to becoming a leading digital economy and give Australians a chance to get new jobs in new and emerging industries'.

[Sources: Joint media release: Prime Minister Scott Morrison media, Treasurer Josh Frydenberg, Minister for Superannuation Financial Services and the Digital Economy Jane Hume 06/05/2021; Business Council of Australia media release 06/05/2021; Budget 2021-22]

NSW ICAC finds Service NSW's quality control framework 'failed to adequately address the misuse of information risks'

- An investigation by the NSW Independent Commission Against Corruption (ICAC) has found that a Service NSW customer service officer engaged in 'serious corrupt conduct' by (among other things) improperly accessing information on a restricted database, agreeing to alter official records, and supplying the information to a person who was not entitled to it, in exchange for a benefit (though ultimately the customer service officer did not receive any benefit). You can find full details of the findings here.
- ICAC is seeking the advice of the Director of Public Prosecutions (DPP) on whether any prosecution should be commenced against both the customer service officer and the friend who requested/was supplied with the information.

- ICAC also states that Service NSW should consider taking disciplinary action against the customer service officer.

Broader recommendations to address weaknesses in Service NSW quality control framework

- ICAC concluded that Service NSW's quality control framework 'failed to adequately address the misuse of information risks, and the agency had misplaced confidence in the effectiveness of its controls'. More particularly, the investigation identified two areas of 'significant risk' at Service NSW: 1) the risk of access to information; and 2) the risk of serving family and friends.
- ICAC makes four recommendations to help Service NSW prevent a recurrence of the conduct identified in the investigation. These are as follows.
  - Recommendation 1 recommends the implementation of a risk-based system designed to improve detection of unauthorised access of personal information. As a minimum, ICAC recommends that Service NSW should use: 'analytics of access logs across the system to help detect anomalous or other patterns of access that might indicate unauthorised access routine, formalised auditing of individual Driver and Vehicle IT System (DRIVES) restricted database access logs to help detect where customer service officers' database accesses are unrelated to legitimate transactions'.
  - Recommendation 2 recommends that Service NSW provides clear guidance on the circumstances where managers can consider allowing an employee to perform transactions in restricted databases (eg DRIVES) for a family member or friend (Recommendation 2).
  - Recommendation 3 recommends the establishment of a single 'electronic family and friends register' to operate across all service centres to more easily facilitate comparison of information between centres (Recommendation 3)
  - Recommendation 4 recommends that that Service NSW 'identifies which trend and other relevant information from the register should be reported to the Operational Governance Team each quarter by service centre managers to enable a meaningful assessment of whether relevant'.

  [Sources: ICAC media release 11/05/2021; Investigation Report; Factsheet]

In Brief | Ransomware attack disrupts fuel supplies in some parts of the US: The FBI has confirmed that 'the Darkside ransomware is responsible for the compromise of the Colonial Pipeline networks' and an investigation into the attack has been launched. In a short statement, the Whitehouse said that it is monitoring the impacts of the incident on fuel supply for the East Coast, and monitoring supply shortages in part of the Southeast. The Administration is 'evaluating every action' available to 'mitigate the impact as much as possible' and has directed Federal government agencies to 'bring their resources to bear to help alleviate shortages where they may occur'.

[Sources: FBI Media releases 10/05/2021; 09/05/2021; Whitehouse Statement by Press Secretary Jen Psaki on the Colonial Pipeline Incident 10/05/2021]

Climate Risk

Greenwashing? New York City is suing three major oil companies for (allegedly) deceptive advertising

New York City has commenced proceedings in the Supreme Court of the State of New York in the County of New York against Exxon, Shell, BP, and the American Petroleum Institute for (allegedly) 'violating New York City's Consumer Protection Law [New York City Administrative Code §§ 20-700 et seq] through false advertising and deceptive trade practices'.

Broadly, the City alleges that the companies' product promotions included claims aimed at convincing consumers that the products were beneficial in addressing climate change, while failing to disclose the negative environmental impacts associated with the use of the products. It's also alleged that the companies presented themselves and the oil and gas industry as leaders in the fight against global warming as a strategy to increase product sales.

Lorelei Salas of the Department of Consumer and Worker Protection sums up the allegations as follows:

> 'When oil companies advertise their core products with words like "greener" and "cleaner" while failing to disclose the actual impacts of those products, it impairs consumers' ability to make informed purchasing decisions. Many New Yorkers want to make smart, green choices and these companies have deceived them into believing they were. We cannot allow them to continue to profit from these deceptions.'

The City is seeking relief to prevent the companies from continuing to engage in the practices alleged in the complaint and to recover civil penalties for the (alleged) breaches of New York City's Consumer Protection Law.

You can find full details here.

[Source: NYC media release 22/04/2021]

2021-22 Budget: Measures to support planning/response to natural disasters, climate-related measures

The government has allocated $1.2 billion over five years from 2020 21 to improve Australia's capability to prepare for/ respond to/recover from natural disasters.

As part of this measure, the government has allocated $61.1 million over four years from 2021-22 (and $22.9 million per year ongoing) to establish a new 'national recovery and resilience agency' (NRRA). The NRRA will be tasked with:

- providing support to local communities during the relief and recovery phases following major disasters;
- advising the government on policies and programs to mitigate the impact of future major disasters
- managing a new $600 million 'disaster preparation and mitigation program'
- taking responsibility for supporting the long-term recovery of communities rebuilding after the recent NSW and QLD floods in and WA cyclones.

The NRRA will be led by Coordinator-General Shane Stone and consolidate into a single national entity the former National Drought and North Queensland Flood Response and Recovery Agency and the National Bushfire Recovery Agency, including the $2 billion National Bushfire Recovery Fund.

Other funding includes:

- $615.5 million over six years from 2021 22 for the 'Preparing Australia program' to provide grants for 'projects that support public and private disaster risk reduction and resilience'
- $209.7 million over four years from 2021 22 (and $37.3 million per year ongoing) to establish the Australian Climate Service which will provide 'detailed climate and disaster information' to support the work of the NRRA and Emergency Management Australia and inform long-term infrastructure, housing and basic services planning. The data will be provided by the Bureau of Meteorology, the CSIRO, ABS and Geoscience Australia. Commenting on the new Australian Climate Service, Minister for the Environment Sussan Ley said it will 'strengthen Australia's position as a world leader in anticipating and adapting to the impacts of changing climates for decades to come'.
- $280.0 million over three years from 2021 22 for grants for projects in bushfire affected areas as part of the $2 billion National Bushfire Recovery Fund
- $90.0 million over four years from 2021 22 to 'enhance EMA's operating model to improve its ability to manage national natural disasters, including through strengthening the Australian Government Crisis Coordination Centre'
- $40.3 million over three years from 2021 22 for a pilot program implemented with the Queensland Government to fund cyclone risk mitigation works for strata title properties in North Queensland
- $8.5 million in 2021-22 for the Rural Financial Counselling Service to improve delivery of financial counselling services to primary producers experiencing financial hardship, and extend support for a further six months for rural and regional small businesses affected by drought, COVID 19 or the 2019 20 bushfires
- $4.5 million over two years from 2021-22 in to support the roll out of 'accredited training' for people working in disaster recovery and fund two pilot Resilience Hubs to coordinate regional training and capability development across all levels of government.
- $2.2 million over two years from 2020 21 to design a cell broadcast national messaging system to provide information to the Australian public concerning events of national significance.

Related measures

- Ocean leadership package: As previously announced on 23 April 2021 the government will provide $100.1 million over five years from 2021-22 to 'improve environmental outcomes for key species and sites in Australia's oceans' and 'stimulate economic growth and jobs in the emerging blue economy'.
- Encouraging recycling: The government has allocated $11.0 million over four years from 2021 22 to further stimulate and incentivise recycling behaviours among Australian businesses and communities.
- Independent review of the Environment Protection and Biodiversity Conservation Act 1999: As part of the government's initial response to the Independent Review of the Environment Protection and Biodiversity Conservation Act 1999, the government has allocated $29.3 million over four years from 2021 22 to 'maintain the timeliness of Commonwealth environmental assessments' and to 'support the delivery of policy reforms'.
- Murray Darling Basin: The government has allocated $1.5 billion over four years from 2020 21 for a package of measures to continue efforts to 'achieve a sustainable and certain future' for the Murray Darling Basin.

Green groups and others have raised concerns

In a short statement responding to the climate-related measures in the budget, Greenpeace Australia raised a number of concerns including what it considers to be a lack of focus on renewable energy in the measures, including a lack of focus on 'proven existing zero emissions technology like wind and solar'. Greenpeace was also critical of the lack of acknowledgement by the government, of climate change as the reason why measures such as the National Recovery and Resilience Agency and Australian Climate Service Initiative are needed and what it considers to be the government's failure to take sufficient steps to actively address the causes of climate change. Dr Nikola Čašule, Head of Research and Investigations at Greenpeace Australia Pacific commented,

> 'Adaptation measures like the National Recovery and Resilience Agency and Australian Climate Service Initiative are necessary because Australians are feeling the impacts of climate change right now, which is driven by the mining and burning of coal, oil and gas. Continuing to use public money to fund gas, a polluting fossil fuel, will only make those climate impacts worse. No amount of adaptation and resilience measures will take the place of real action on climate change, which is phasing out fossil fuels, scaling up renewable energy, and reaching net-zero emissions by 2035'.

The Australian Conservation Foundation (ACF) expressed disappointment at the lack of funding for environmental/climate related measures, and the lack of focus on tackling the causes of climate change. ACF's Economy and Democracy Program Manager, Matt Rose commented that 'The government is throwing loose change at Australia's climate and extinction crisis'.

Independent MP Zali Steggal has also raised concerns about the level of funding allocated, the continued focus on a 'gas led recovery' and the lack of detail around some of the funding commitments. Ms Steggal commented,

> 'The Treasurer talks about being the custodians of the continent but there is barely funding to protect the environment and certainly not enough to see Australia reach net zero by 2050. Australia is facing several crises. Biodiversity loss is accelerating, the global heating is worsening, oceans are acidifying and still overflowing with plastics. Communities are being flattened with successive, unprecedented disasters that are predicted to become more frequent and more severe. Yet the scale of these challenges has not been met with any urgency in this budget…Any positive work to reduce emissions is also being undone by the Government's continued 'Gas-Fired Recovery' detour. This budget sees several hundred million in handouts for the Gas Industry. This is not in line with the science which is calling for a phase out of fossil fuels. Details in the budget were also fuzzy around exactly where the $1.6 billion over 10 years put aside for the emissions reduction will go. Additionally, if you compare this to infrastructure spend of over $110 billion from the last several budgets it is a drop in the bucket'.
>
> [Sources: Prime Minister Scott Morrison media release 05/05/2021; Budget 2021-22, Governance Institute of Australia media release 11/05/2021; Greenpeace Australia media release 11/05/2021; ACF media release 11/05/2021; Zali Steggal MP media release 11/05/2021]

In Brief | (False) accusations of greenwashing? An energy company has launched legal action against Greenpeace Australia Pacific over a campaign branding it as the 'biggest climate polluter in Australia'. The company is seeking to have its logo removed from the campaign and has called into question the accuracy of Greenpeaces' claims. In a statement, Greenpeace branded the company's actions as 'classic scare tactics' designed to 'stifle legitimate criticism'

[Sources: Greenpeace media release 11/05/2021; Greenpeace Report: Coal-faced: Exposing AGL as Australia's biggest climate polluter]

In Brief | Macquarie has outlined plans to accelerate its push towards green financing and has said it will exit coal entirely by 2024. The investment bank has said it will release a detailed plan by the of 2022, and will report annually on progress

[Source: Macquarie media release]

In Brief | Net Zero is a good idea in principle, but it's also got drawbacks? Climate scientists discuss how the concept of 'net zero' has operated in practice to diminish the sense of urgency around actively reducing emissions in the immediate term, and to perpetuate the belief in 'technological salvation'

[Source: The Conversation 22/04/2021; Conversation podcast 11/05/2021]

Other News

Top Story | Federal Budget Highlights 2021-22

The 2021 Federal Budget provides Australia with a roadmap to help guide Australia's business and economic recovery as the nation emerges from the unprecedented COVID-19 impacts of 2020.

You can access the MinterEllison tax team's full analysis here.

2021-22 Budget: First home buyer measures announced

The government has announced a number of measures aimed at improving access to home ownership for first home buyers. As part of the 2021-22 Budget, the government has announced that it will:

- Establish the 'Family Home Guarantee'. The measure make 10,000 guarantees available to single parents with dependents over the next four years, enabling them to purchase a home with a deposit of 2%.
- Expand the 'New Home Guarantee' for a second year, providing an additional 10,000 places in 2021-22. This will enable first home buyers who are seeking to build a new home or purchase a newly built home to do so with a deposit of 5%
- Increase the maximum amount of voluntary contributions that can be released under the First Home Super Saver Scheme from $30,000 to $50,000. Voluntary contributions made from 1 July 2017 up to the existing limit of $15,000 per year will count towards the total amount able to be released. The increase in maximum releasable amount will apply from the start of the first financial year after Royal Assent of the enabling legislation. This is expected to have occurred y 1 July 2022.
- Provide an additional $124.7 million in funding to allow the states and territories to increase public housing stock or to 'meet their social and community housing responsibilities under the 2011 Fair Work decision on Social and Community Services wages'.

  [Source: Joint media release: Treasurer Josh Frydenberg, Minister for Families and Social Services Anne Ruston, Assistant Treasurer Michael Sukkar, and Minister for Superannuation, Financial Services and the Digital Economy Jane Hume 10/05/2021; Budget 20211-22]

2021-22 Budget: Enabling small business to apply to pause/modify ATO debt recovery action

As part of the 2021-22 Budget, the government has announced that intends to introduce legislation to allow small businesses – ie businesses with 'aggregated turnover of less than $10 million per year' - to apply directly to the Administrative Appeals Tribunal (AAT) to pause or modify ATO debt recovery actions where the debt is being disputed in the AAT (as opposed to having to go through the court system).

According to the government's announcement, the changes will allow the Small Business Taxation Division of the AAT to pause or modify any ATO debt recovery actions – eg garnishee notices and the recovery of General Interest Charge or related penalties - until the underlying dispute is resolved by the AAT.

The measure is intended to save small businesses time and costs and provide greater certainty around the process.

It's proposed that the new powers for the AAT will be available in respect of proceedings commenced on or after the date of Royal Assent of the legislation.

In a statement, the Australian Small Business and Family Enterprise Ombudsman Bruce Billson welcomed the measure. Mr Billson said,

> 'Small businesses disputing an ATO debt in the AAT will get a fairer go by stopping the ATO from relentlessly pushing on with debt recovery actions against a small business, while the case is being heard. I commend the government which has acted quickly to implement a key recommendation in our recently released report: A tax system that works for small business which will allow small businesses to pause ATO debt recovery actions until their case is resolved by the AAT….Under the proposed changes, small businesses can save thousands of dollars in legal fees, not to mention up to two months waiting for a ruling'.

[Sources: Joint media release: Treasurer Josh Frydenberg, Attorney General Michaelia Cash, Minister for Employment, Workforce Skills, Small and Family Business Stuart Robert, Assistant Treasurer Michael Sukkar 10/05/2021; ASBFEO media release 10/05/2021; Budget 2021-22]

Calls for a roadmap to open Australia's borders are growing?

In a statement welcoming the approach in the 2021-22 Federal Budget, and in particular the focus on jobs-creation, the Business Council of Australia nevertheless underlined the need for a clear roadmap for reopening Australia's borders. BCA CEO Jennifer Westacott said,

> 'We need a consistent, clear and understood national roadmap that outlines how we permanently reopen the domestic economy and gradually reopen our international borders. Without a careful, nationally coordinated plan to reopen the economy tied to progress in the vaccine roll-out we risk eroding our competitive advantage in areas such as attracting international students and high skilled labour. This will hold us back from growing the industries of the future such as advanced manufacturing and digital. We cannot allow our successful management of COVID-19 to become our Achilles heel. The budget assumes no substantial reopening of the economy before the middle of 2022. Safely reopening the economy is a sure-fire way to create more jobs, deliver more services and products, expand businesses, bring the unemployment rate down further and pay higher wages'.

Likewise, in her statement responding to the budget, Independent MP Zali Steggal expressed disappointment that there was no firm plan to accelerate the timeline for reopening Australia's borders and no plans for new national quarantine facilities (except the $487 million for quarantine in the Northern Territory). She commented,

> 'I'm disappointed… that there is no solution to opening the borders sooner. This would have been a serious investment in the development of a national federal quarantine system and would have demonstrated a commitment to resuming trade, investment and tourism'.

[Source: Business Council of Australia media release 11/05/2021; Zali Steggal media release 11/05/2021]

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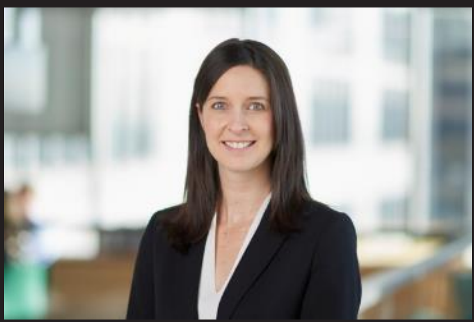

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