# Governance News

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

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# Contents

# Boards and Directors

## Every board should have courage, curiosity and compassion? A discussion of the top attributes modern boards need and are expected to have to be effective

### Key Takeouts

- In a session entitled 'Why board composition is top of the agenda' at the Governance Institute's Governance and Risk Management Forum 2021, Non-executive Director, Columbus Capital Leah Fricke said that diversity is a top priority for boards because of the changed and increased expectations of directors, and because of the changed environment. Boards are having to question whether their composition reflects recent changes to the business ecosystem and risk landscape.
- Though there is no one formula for an ideal board, Ms Fricke suggested curiosity, courage and compassion are three overarching attributes (among others) that every modern board needs to have in the current environment. Asked to nominate other 'key' overarching attributes, 'challenge' emerged as a key theme among the responses from attendees.
- Ms Fricke suggested there is a lack of appreciation of the value of a board skills matrix/the value of the exercise from both a board perspective and a shareholder perspective.

**Board composition**

### What attributes do modern boards need now (and how and why is this different from what they always needed?)

A key theme of the discussion Chaired by Guy Gilead, Senior Sales Director, Nasdaq and Leah Fricke Non-Executive Director, Columbus Capital at the Governance Institute's Governance and Risk Management Forum 2021 was the change in the baseline expectations of board competency/skills/experience that has occurred in recent years.

Despite no formal change in directors' legal duties, expectations of individual directors has increased, Mr Fricke observed. It is now a baseline expectation she suggested, for every director to have the necessary knowledge/skills/understanding (for example the necessary legal, financial and industry insight) to competently execute their oversight role.

What has changed, she suggested, is that following the events of 2020, the focus on social issues has escalated and the influence of social movements (eg BLM, MeToo#) has increased. Diversity and more particularly, representation of diverse groups at board level has emerged as a 'mega trend'.

In consequence, Ms Fricke suggested that the conversation around board composition has shifted towards ensuring that there is visual diversity, diversity of views, and diversity of skills beyond 'traditional' legal and financial knowledge/experience and industry expertise. Boards are having to question whether their composition reflects recent changes to the business ecosystem and risk landscape. Ultimately, diversity is at the top of the agenda in large part because of the shift in expectations/environment.

### No recipe for a perfect board, but there may be some overarching attributes that all boards should have

Ms Fricke observed that ultimately there is no universally agreed ideal from a board composition perspective. Rather what it will depend on the particular case.

Having said this, Ms Fricke suggested that there are some key attributes that modern boards arguably should possess in order to executive their role in the current environment, ensure they are able to rapidly adapt to future shocks. They are: curiosity, courage and compassion.

These attributes are key, Ms Fricke suggests, to the ability of board members to work constructively and quickly with each other towards a good outcome as proved to be so necessary in 2020.

Ms Fricke called on attendees to workshop and present their own ideas around the top three overarching attributes/essential skills they consider that all boards will need over the next five years.

In addition to the three attributes put forward by Ms Fricke, key themes in the suggestions put forward by the audience included the following.

Challenge

- A number of attendees put forward various suggestions around the need for boards to challenge/create an environment that encourages/is welcoming of challenge. There appeared to be some diversity of views around the form this challenge might take: from boards 'turning things on their head' (pushing for organisations to do things differently), being a 'visionary' which was described as being the 'opposite of the status quo', to asking challenging questions 'in a respectful way' or being able to have 'confronting conversations'.
- On this point, Ms Fricke suggested that when thinking about challenging the way things have always been done, it might be useful to think about it as a long-term goal, rather than a short term objective that is best achieved through a number of conversations, rather than in a single meeting/discussion.
- Ms Fricke also spoke about 'relationship enhancing challenge' – managing challenge so that it is not conflict – but a constructive and collaborative process.

Bringing new thinking/'outside views' to the board

Another theme to emerge from the responses from attendees was the need for board to know/have an understanding of what stakeholders need/expect, it was also suggested that directors should be diplomats or 'empaths' and able to engage authentically. Likewise it was suggested that directors should be expected to bring a 'world view' (perhaps based on their international experience/experience outside the organisation/sector) to their role.

Other suggestions put forward included:

- The need to be 'inquisitive' ie the need for boards to provide 'thought leadership' to the organisation around future challenges
- Thinking about risk/using risk management 'as an enabler'
- Acting as a 'safety break or black hat'
- 'Intellectual grunt'

### A missed opportunity: Lack of focus/evolution of the board skills matrix

- Ms Fricke briefly spoke about the lack of evolution she has observed in the development of/use of a skills matrix by boards and the lack of appreciation of the value in the exercise from a shareholder perspective and from a board perspective that she considers this demonstrates.
- Asked why boards haven't embraced the process/for her views on the reasons for the lack of development in the process over time, Ms Fricke said that some directors may see the process as threatening and/or simply not see the need to justify their position on the board – ie they may feel entitled to their board seat and even view it 'as a retirement option'. Some directors who took on their directorship with no expectation that there would be an assessment process may be hostile to the introduction of a process that they may not feel that they signed on for.
- However, Ms Fricke pointed out that ultimately, there is value for boards in having a robust board skills matrix in place. For example, she suggested that it enables boards and organisations as a whole, to 'have a good answer for shareholders' around what value they as a collective board, and as individuals bring, if when/challenged. It also gives boards and organisations a good basis for long-term succession planning by identifying a 'wish list' of deficiencies as well as strengths.

### Why the push back to increase diversity on boards?

Asked why there is still opposition to increased board diversity from boards, Ms Fricke suggested that it may come down to boards preferring the status quo. She also suggested that there may be a lack of recognition that diversity adds value.

[Source: This post is based on notes taken during the session: Why board composition is top of the agenda, Chaired by Guy Gilead, Senior Sales Director, Nasdaq and delivered by Leah Fricke FGIA FCG, Non-Executive Director, Columbus Capital at the Governance Institute's Governance and Risk Management Forum 2021 17/05/2021]

# Remuneration

## Remuneration as a window into what a company values? Companies and directors are rethinking the way they approach remuneration

A brief overview of some of the key points from the presentation, 'Getting Remuneration Right', delivered by Mathew Ronald FGIA, Director, EY at the Governance Institute's Governance and Risk Management Forum 2021

### Key Takeouts

- Remuneration decisions are increasingly perceived as an indication to both internal and external stakeholders of what the company values and/or how seriously it takes a particular issue
- Accountability expectations have sharpened. Investors (and other stakeholders) expect remuneration decisions to reflect more than financial performance. This has triggered an uptick in the use of non-financial metrics and an a shift in the way boards approach decision making on the issue – there is a much stronger focus on discretion and consequence management
- ESG metrics are not as widely used in the Australian market as in other markets (eg the UK), though this is expected to change
- In light of heightened accountability expectations, companies should consider what options are available to them in terms of applying the appropriate consequences, if/when something goes wrong (whether or not variable remuneration exists within their organisation)

In his address to the Governance Institute's Risk Management Forum 2021, EY Director Matthew Ronald spoke on the topic of executive remuneration including discussing the link between remuneration and the perceived value that the board/company places on a particular issue/priority.

Some key takeaways from the session are below.

### The link between remuneration and accountability: Executive remuneration as a 'key lever' for boards

Mr Ronald said that remuneration decisions, which he described as the 'most visible' decisions that the board will make, provide 'a lens into what the board is thinking' for both internal and external stakeholders. For example, when faced with an ethical failure within the organisation, decisions around pay consequences send a powerful signal around how seriously the board is taking the issue. In other contexts, for example during the height of the COVID-19 pandemic, a number of organisations announced cuts to pay to signal that they are 'sharing' the experience of stakeholders.

Mr Ronald emphasised the importance of embedding accountability into organisational thinking around remuneration, even in organisations where variable pay is not a feature in light of these heightened expectations.

### Current trends/issues in executive remuneration

Mr Ronald provided a brief overview of current remuneration trends/developments. These include:

- The overall quantum of payments has been declining since the global financial crisis and this trend looks set to continue
- In listed companies, there is a move to reduce variable remuneration and instead increase fixed targets
- Business sustainability is increasingly being factored into remuneration plans eg through use of non-financial metrics including ESG targets
- Organisations are starting to use a broader range of remuneration structures
- The focus on the exercise of discretion and consequence management has sharpened: There is a stronger focus at board level on making an independent assessment around decisions on remuneration/consequence management. Mr Ronald observed that five years ago, a board might accept that if KPIs had been met, the full bonus should be paid as a matter of course. Now, boards are increasingly tending to apply their discretion to assess whether the outcome is appropriate in all the circumstances.

### Use of non-financial performance measures

- Where previously performance measures were typically financial only (eg total shareholder return (TSR)), non-financial metrics are increasingly being used, largely in response to investor demand.
- Mr Ronald said that investors are increasingly looking at incentive plans to gain insight into what the company values. For example, if the company sets a carbon reduction goal, and this is reflected in executive remuneration plans, it sends a strong signal about the importance/value placed on achievement of that goal. Conversely, he suggested that failure to tie commitments to executive remuneration could signal that the company places less value on achievement of the goal.
- Mr Ronald observed that in Australia:
  - the most commonly used non-financial metrics tend to relate to: strategy, employee engagement, employee safety (particularly in some industries) and ESG metrics. On the use of ESG metrics, Mr Ronald said that as yet use is fairly limited in Australia (in comparison for example with the UK) but that this is expected to change.
  - use of non-financial metrics is more commonly used in the context of short term incentive plans (STIPs) rather than long term incentive plans (LTIPs). For example, currently only 13% ASX 100 companies include non-financial measures in their LTIPs.

### Executive remuneration and accountability

- Mr Ronald touched briefly on the shift in thinking around accountability vs responsibility. He observed that increasingly, companies are prepared to/expect to hold 'accountable' individuals to account, whether or not they were personally 'responsible' for a particular incident/action.
- Mr Ronald also observed that the way in which companies approach remuneration is changing, and that increasingly companies are taking a more holistic view. For example, Mr Ronald said remuneration committees are transforming into 'people committees' in some organisations. These committees take into account accountability/culture across the organisation – for example they might monitor whistleblower complaints or breaches of policy - in the context of remuneration. Companies are also starting to put in place a consequence management framework to link up/provide an overview of incidents across the organisation.

- Asked to comment on how influential APRA's new guidance (CPS 511) will be for companies outside the financial services sector (once finalised), Mr Ronald said that both the guidance and the Banking Executive Accountability Regime (BEAR) eg the use of accountability statement, will have an influence over time.

### Preparing for when things go wrong

- Mr Ronald also discussed the need for companies and for boards, to be clear on how they will respond/the options for doing so, if/when things go wrong. Broadly, he suggested that boards need to be clear on:
  - What options are available to them if/when there is a need to apply accountability consequences: For example, does the board have the option to apply a cut to paid or unpaid variable remuneration? How broad is the discretion? What other options, are available?
  - the decision making process and the factors/information to be considered
  - the timeframe in which a decision could be reached and communicated
  - how the impact of the decision will be monitored and recorded.
- He observed that where an ethical breakdown has occurred, boards often have little time before they are expected to publicly respond and that good preparation will support response/mitigation efforts.

[Source: This post is based on notes taken during the session: Getting Remuneration Right, delivered by Mathew Ronald FGIA, Director, EY at the Governance Institute's Governance and Risk Management Forum 2021 17/05/2021]

## Directors should not receive bonuses for killing or injuring fewer workers: PIRC calls for a rethink of incentive design

The Pensions & Investment Research Consultants Ltd (PIRC) has called for a rethink of what it considers to be 'overly complex executive pay models' at FTSE 350 companies, arguing that the current approach does not sufficiently incentivise directors to keep workers safe.

PIRC argues that in current incentives effectively reward for 'killing or injuring fewer workers', rather than being focused on keeping workers safe.

In support of this argument, PIRC cites its own research which found that the average loss of earnings for FTSE 350 directors for an employee fatality during the 2019/20 reporting year was only 0.85% of total pay (or £33,628).

PIRC argues that 'even where companies do have a real commitment to worker safety, the overly complex executive pay models typical in FTSE350 companies generate ridiculous and insulting outcomes in relation to fatalities'.

PIRC’s Conor Constable said,

> ‘A bonus should be given for exceptional performance. In the UK’s broken executive pay system the bar is set so low that a company killing or injuring less of the workforce is effectively treated as exceptional. And the extra reward that directors receive on top of their salary is simply fractionally lower if a worker dies on the job.’
>
> [Source: PIRC blog 11/05/2021]

# Disclosure and Reporting

## Call to action: Ceres calls on investors to express their support for climate change disclosure rulemaking by the SEC

Following the Securities and Exchange Commission's (SEC) call for public comments to aid in the development of climate change disclosure rules, Ceres has appealed to investors and companies to sign on to a 'statement of essential principles for SEC climate change disclosure'.

The statement outlines suggested 'minimum' standards/elements that any Ceres considers any climate disclosure rules issued should meet. These include the following.

- SEC's work 'should be based' on the TCFD recommendations
- SEC rulemaking should include industry specific metrics, building on existing standards in common use by investors and companies
- Rules should include requirements for entities to provide details around their climate risk exposure, strategies and scenario planning
- Rules should include Scope 1, 2 and 3 emissions
- Material climate disclosures should be included in annual, quarterly and 'other appropriate SEC filings'
- SEC rules, once issued, should be updated regularly and should reflect the development and/or adoption of new metrics

### An opportunity to push for mandatory disclosure by all publicly listed companies

- Ceres states that it has been calling for the introduction of mandatory climate disclosure rules for some time, and suggests that there are signs that support for mandatory disclosure is building. For example, Ceres notes that Apple, Salesforce and HP have announced their support for mandatory disclosure.
- Ceres further notes that the Biden-Harris Administration has flagged plans to issue an executive order that will include new climate risk disclosure requirements.
- Ceres suggests that investors now 'have an opportunity to go even further and require all publicly traded companies to better disclose the risks posed by the climate crisis'.

[Sources: Ceres email to subscribers 17/05/2021; Statement of essential principles for SEC climate change disclosure]

## Introduction of mandatory TCFD reporting requirements in the UK: Update on timing, the IA has called for the government to strengthen its approach

### Proposed Timing

- Context: In March 2021, the UK Department for Business, Energy & Industrial Strategy launched a consultation seeking views on proposals to introduce mandatory TCFD aligned climate-related financial disclosures from publicly quoted companies, large private companies and Limited Liability Partnerships (LLPs). Consultation closed on 5 May 2021. You can find the full text of the proposals here. You can find our summary of the proposed approach in Governance News 31 March at p9
- Timeline for finalising rules? The Regulatory Initiatives Grid May 2021, released by the UK Financial Conduct Authority (FCA), indicates that the FCA plans to:
  - consult on draft rules requiring asset managers, life insurers and FCA-regulated pension schemes to align their reporting with the TCFD recommendations by June 2021, with a view to publishing final rules by Q4 2021.
  - conduct a separate consultation on proposals to extend the scope of listed issuers covered by the FCA's TCFD-aligned disclosure rules in June 2021, with a view to publishing final rules by Q4 2021.

You can find the FCA's Regulatory Initiatives Grid here.

## The Investment Association submission to the BEIS consultation: The IA has called for the government to go further

In its submission to the BEIS consultation, the UK Investment Association has called on the government to go further. The submission states,

> 'The IA supports the proposals to introduce TCFD reporting for large public and private companies…While we support efforts to ensure disclosure expectations are proportionate, it is essential that efforts are made with urgency to provide transparency and accountability on climate risk across the economy. It is imperative that these proposals provide consistency and comparability and are set at the right level of granularity to enable investment managers and asset owners to meet their own reporting requirements.'

### The IA recommends strengthening the proposed new requirements

The submission calls on the government to strengthen its proposed approach by requiring:

- climate metrics and targets disclosures to be provided at the subsidiary level (if the subsidiary has raised capital through a debt or equity issuance). The IA argues that this is 'essential for investment managers to form a portfolio-level view of climate risk and to report to their clients' in line with their own reporting requirements.
- disclosures to be aligned with all 11 recommendations of TCFD (rather than aligned to only the four pillars as proposed). The IA considers that this level of detail is necessary in order to enable investment managers to 'assess and manage climate risk and to ensure regulatory alignment of requirements across the investment chain'.
- disclosure of scenario analysis
- mandatory disclosure of material Scope 3 emissions data under SECR
- disclosures of climate change related metrics and targets in addition to KPIs
- removing the qualification that companies only have to comply with the obligations if they consider climate-related disclosures to be material

The submission is supportive of the proposed timing put forward by the BEIS.

[Sources: UK Investment Association submission: BEIS Consultation on requiring mandatory climate-related financial disclosures by publicly quoted companies, large private companies and limited liability partnerships (LLPs) 05/05/2021; FCA's Regulatory Initiatives Grid]

## ASIC issues infringement notice and $66,000 penalty to airline for (alleged) breach of continuous disclosure obligations

- The Australian Securities and Investments Commission (ASICO has found there are 'reasonable grounds to believe' that airline Regional Express Holdings Limited's (REX) breached its continuous disclosure obligations under section 674(2) of the Corporations Act 2001 (Cth) and ASX Listing Rule 3.1 during the period 11-12 May 2020 by failing to lodge material information with the ASX, prior to informing the public.
- ASIC has issued an infringement notice alleging that the company has not complied with its obligations and REX has paid a penalty of $66,000. Details of the infringement notice will be published in the ASIC Gazette.
- This follows ASIC's earlier action to restrict REX from issuing a reduced-content prospectus and using exemptions for reduced disclosure in fundraising documents until 14 December 2021.
- ASIC's statement makes clear that compliance with an infringement notice is not an admission of guilt or liability and that REX is not, by reason of its compliance with the notice, regarded as having contravened section 674(2) of the Corporations Act.

### Details of the (alleged) failure to disclose material information

According to ASIC:

- On 11 May 2020 REX gave an interview with the AFR in which it provided details of the company's plans to potentially expand its operations to include domestic as well as regional operations. The article was published by the newspaper on 12 May 2020.
- ASX contacted REX about the article following its publication on 12 May and REX was placed in a trading halt. REX disclosed to ASX later the same day, that it was considering the feasibility of commencing domestic operations.

ASIC states that,

> 'Listed entities are required to immediately disclose material information in certain circumstances. This includes when that information loses confidentiality, for example when a journalist becomes aware of it. Continuous disclosure of information protects the integrity of the market by ensuring investors are provided with equal and timely access to information about an entity'.

### REX maintains that did comply with its obligations

In a brief statement REX states,

> 'Rex maintains the position that it did comply with those obligations at all times and will continue to comply with these disclosure obligations'.
>
> [Sources: ASIC media release 18/05/2021; REX ASX Announcement 18/05/2021]

## In Brief | Ahead of the 2021 interim reporting season, a review by the UK Financial Reporting Council of the interim reports of 20 entities listed on the main market of the London Stock Exchange, whose interim period ended between June 2020 and September 2020 has highlighted examples of good practice and areas where further improvements are required such as 'providing better explanations on balance sheet movements'

> [Sources: FRC media release 18/05/2021; Full text report]

## In Brief | FRC report concludes that the volume of reporting around remuneration practices by FTSE 350 companies has generally increased since the introduction of the UK Corporate Governance Code 2018

> [Sources: FRC media release 12/05/2021; Full text report: Changes in remuneration reporting following the UK Corporate Governance Code 2018, May 2021]

# Shareholder Activism

## 2021 has already seen a record number of majority votes on shareholder ESG resolutions, Ceres argues it points to a sea change in expectations

2021 has seen a significant increase in the number of shareholder ESG resolutions receiving majority support. For example:

- 81% of DuPont shareholders voted in support of a plastic pellet shareholder resolution, against the boards' recommendation. According to As You Sow, this is the highest ever shareholder vote on an environmental resolution opposed by company management. You can find the full text of the resolution here.
- 98% of General Electric shareholders voted in support of As You Sow's net zero resolution, in line with the board's recommendation. You can find the full text of the resolution here.
- 60% of American Express shareholders voted in support of As You Sow's diversity resolution. You can find the full text of the resolution here.
- 53.5% of independent Berkshire Hathaway shareholders (27.1% overall) voted in support of As You Sow's diversity resolution. You can find the full text of the resolution here.
- 58% of ConocoPhillips shareholders voted in support of a shareholder resolution (filed by Follow This - you can find the full text of the resolution here) calling on the company to set scope 3 emissions reduction targets, despite the ConocoPhillips board recommending that shareholders vote against it.
- A majority of shareholders at Phillips 66 voted in support of a shareholder emissions reduction resolution (filed by Follow This) as well as a Paris-aligned lobbying resolution (filed by the California State Teachers Retirement System).

Writing for Forbes, Mindy Lubber CEO and President of Ceres, attributes the uptick in support for shareholder ESG resolutions to a sea change in investor expectations and a willingness on the part of investors to exercise their voting rights accordingly. She states,

> 'All of these winning shareholder proposals add up to a dramatic sign of rapidly changing investor expectations for climate action. And Climate Action 100+ investor signatories—which are responsible for $54 trillion or half

of the managed assets in the world—are acting on their pledges to engage with the world's largest corporate greenhouse gas emitters to achieve the goals of the Paris Agreement'.

[Sources: As You Sow resolutions tracker; Follow This media release 12/05/2021; Follow This media release 11/05/2021; Ceres media release 12/05/2021; Forbes 14/05/2021]

## Say on climate: 88.74% of Shell shareholders have voted in support of the company's transition plan, 30% also backed a shareholder wind-down resolution

The Royal Dutch Shell AGM was held on 18 May 2021.

- 88.74% of Royal Dutch Shell shareholders have voted in support of the company's transition plan at the 18 May AGM
- A shareholder climate resolution (filed by Follow This) seeking that the company set targets to wind down fossil fuel production in line with the Paris Agreement received 30% support, despite the board recommending shareholder vote against it. The board considers that the resolution unnecessary in light of the actions already being taken and in light of its transition plan.

### Shell's response

Commenting briefly on the result, Shell CEO Ben van Beurden said,

> 'Shareholder support is critical as our business changes and we work towards our target to become a net-zero emissions energy business by 2050, in step with society. This shareholder vote on our Energy Transition Strategy is a first for an energy company and we are pleased shareholders demonstrated their strong endorsement with more than 88% of votes cast in favour of our strategy. We thank shareholders for their support and look forward to our continued engagement with them.
>
> We also note the outcome of the vote on Shareholder Resolution number 21. We will seek to fully understand the reason why shareholders voted as they did, particularly those who voted both 'For' Shell's strategy and 'For' the Shareholder Resolution, and will formally report back to investors within six months'.

### Response from Follow This

- Follow This has welcomed the level of support for its resolution which Follow This Founder Mark van Baal, described as 'beyond expectations'.
- Follow This also interprets both: a) increased level of support for the Follow This climate resolution as compared with last year (the resolution received 30% support up from 14% in 2020) and the 11% vote against Shell's transition plan (other board-backed resolutions received up to 99% support) as a 'signal of dissent' over Shell's transition plan.

Mr van Baal commented,

> 'This year for the first time, Shell put forward its own climate plan for a vote – and yet again, shareholders are sending a strong signal that Shell will have to set new targets. Shell's policy falls short of what is needed to protect investors from devastating climate change'.

Various organisations including the Australasian Centre for Corporate Responsibility have previously raised concerns about Shell's transition plan. You can find the ACCR's assessment here.

[Sources: Royal Dutch Shell Plc Results of AGM; Speeches by Chair and CEO; Follow This media releases 18/05/2021; 18/05/2021]

## 20.7% of BP shareholders back a shareholder resolution calling for the company to set tougher climate targets, BP has said it will continue to engage with shareholders on the issue

- 20.65% of BP shareholders (up from 8.4% in 2019) voted in support of a shareholder resolution (filed by As You Sow) calling on the company to align its targets with the goals of the Paris Agreement at the 12 May AGM. The full text of the resolution is here.
- The board recommended shareholders vote against the resolution on the basis that implementing the request would necessitate BP revisiting its current strategy (which would involve disruption to its current business plans).

In a statement, As You Sow's Mark van Baal thanked the institutional investors who voted to endorse the resolution, and called on the company to reassess its position. He said,

> 'BP should go back to the drawing board and disrupt its current business plans, which involve an increase in emissions, in order to protect investors' assets from climate change….We do not ask oil majors to stop with fossil fuels tomorrow, but we request them to start investing in renewables today. Our fair-ask is that oil majors commit to Paris by setting reduction targets for all their emissions, no more, no less. We thank the investors for their support for this necessary step to achieve the Paris Climate Agreement, and do not accept BP's stalling of climate action. The oil industry can make or break the Paris Climate Agreement'.

Commenting on the level of support for the shareholder climate resolution, BP committed to continuing to engage with shareholders on the issue and to provide an update on the outcomes of that engagement.

> 'a shareholder resolution on climate change targets, that the board of directors recommended not to approve, has been rejected by shareholders. However, we recognise that some shareholders (20.65% of votes cast) chose to support this resolution. We will continue to engage with shareholders on our strategy, targets and aims so as to ensure their views are fully understood. We will publish an update on this engagement, in accordance with the UK Corporate Governance Code, within six months of the 2021 AGM'.

### Director elections and the remuneration report

- All directors standing for election or re-election were elected with less than 5% of votes against.
- 95.2% of shareholders voted to endorse the directors' remuneration report.

[Sources: Follow This media release 12/05/2021; BP AGM results]

## Targeting climate lobbying in the utilities sector: 37% of shareholders back shareholder climate lobbying resolution at Sempra Energy

- According to As you Sow, 37% of Sempra Energy shareholders have voted in support of a shareholder resolution (filed by As You Sow, Calvert Research and management and the Office of the Illinois State Treasurer) calling on the company to report on: a) the alignment of its climate lobbying activities (including those of the associations to which it belongs) with the goals of the Paris Agreement; and b) how the company plans to mitigate the risks represented by any misalignment identified. You can find the full text of the resolution here.
- The resolution was opposed by the Sempra Board who unsuccessfully applied to the Securities and Exchange Commission to exclude it.
- Welcoming the outcome, Illinois State Treasurer Michael Frerichs expressed hope that it will trigger a shift in direction at Sempra.

> 'We hope to see Sempra finally change course and rise to meet the expectations of investors who want to ensure their companies are transitioning business plans to succeed in a low carbon world. Stalling progress on decarbonisation poses serious risk to the future value of portfolios which will be increasingly impacted by the more intense nature of storms, heat waves, floods, fires, droughts, and diseases — the harms associated with a warming climate.'

### Broader campaign

- The resolution is part of a long-running campaign targeting lobbying efforts by the US utilities sector.
- Similar climate lobbying shareholder resolutions have been filed at a number of other US companies including United Airlines Holdings, Delta Airlines, ExxonMobil, Phillips 66 and Norfolk Southern as part of a broader campaign to push US companies to align their lobbying with the goals of the Paris Agreement.

[Sources: As You Sow media release 14/05/2021; As You Sow blog 11/05/2021]

## 98% of shareholders back shareholder anti-deforestation resolution at global agricultural commodity trader, Bunge Ltd

Green Century has announced that 98% of shareholders have voted in support of a shareholder resolution, coordinated by Green Century and Storebrand Asset Management, calling on 'big four' agricultural commodity trader Bunge Ltd to strengthen its no-deforestation policy.

Bunge currently sources soy from Brazil where the soy crop is associated with high rates of deforestation. Unusually, the resolution had the support of the Bunge Board.

According to Green Century this is the highest level of shareholder support recorded for a shareholder deforestation resolution, topping the previous record of 67% shareholder support for a resolution (also coordinated by Green Century) at Proctor & Gamble. The result at Bunge also follows both Archer-Daniels-Midland Company and JP Morgan Chase making 'significant commitments' as a result of engagement with Green Century on the issue.

In a statement welcoming the result, Green Century flagged that it will continue to monitor Bunge's actions on the issue. President of Green Century Leslie Samuelrich also commented that

> 'The vote should be a signal to other companies in the Brazilian soy supply chain that investors are on high alert about these risks.'
>
> [Sources: Green Century media release 07/05/2021; 13/10/2021]

## Successful engagement: As You Sow's campaign to push companies to reduce their use of virgin plastic has succeeded in securing agreement from another company

- As You Sow has withdrawn its resolution at Walmart Inc, after securing agreement from the company that it will reduce its use of single use plastic packaging by 2025.
- To date, five of the ten companies targeted by As You Sow with similar resolutions have made commitments to reduce their use of virgin plastic:
  - Keurig Dr Pepper has committed to cut its use of virgin plastic 20% by 2025.
  - Mondelez has committed to a 5% absolute reduction in virgin plastic, including a 25% cut in virgin plastic in its rigid plastic packaging
  - The remaining companies three companies - PepsiCo, Target, and Walmart - will finalise and disclose their reduction targets later in the year.
- Two shareholder proposals on cuts in plastic use are still pending and set for a shareholder vote at Amazon on 26 May 2021 and Kroger in June.

> [Source: As You Sow media release 11/05/2021]

## A majority of shareholders at Phillips66 and ConocoPhillips back shareholder climate resolutions

- At the 11 May AGM 58% of ConocoPhillips shareholders voted in support of a shareholder resolution (filed by Follow This - you can find the full text of the resolution here) calling on the company to set scope 3 emissions reduction targets, despite the ConocoPhillips board recommending that shareholders vote against it. The board opposed the resolution on the basis of the actions that the company has already taken, including setting a net-zero by 2050 target for its Scope 1 and 2 emissions.
- At the 12 May AGM an undisclosed majority of shareholders at Phillips 66 voted in support of a shareholder resolution filed by Follow This and ACCR, calling on the company to set scope 3 emissions reduction targets (full text here). Separately, an undisclosed majority of shareholders also voted in support of a Paris-aligned lobbying resolution (filed by the California State Teachers Retirement System (CalSTRS).

Ceres (a founding member of Climate Action 100+) interprets the results as evidence of the effectiveness of investor engagement through the Climate Action 100+ initiative, and suggests that the level of support signals a broader shift in investor thinking on the issue. Ceres representative, Andrew Logan commented, 'These three majority votes in one week already equal the total number of previous majority votes on climate proposals in the entire history of the US oil and gas industry. These votes at ConocoPhillips and Phillips 66 leave no doubt that investor expectations on climate have been raised for the oil and gas sector… As we look toward upcoming annual meetings at ExxonMobil and Chevron later in the month, the votes this week already indicate a clear shift in the standards that shareholders now hold for the oil and gas industry on climate'.

[Sources: Follow This media release 12/05/2021; Follow This media release 11/05/2021; Ceres media release 12/05/2021]

# Regulators

## Regulators' panel discussion provides insights into ASIC, ASX and ACNC key areas of focus

A brief overview of some of the key points from the panel discussion featuring panellists, Cathie Armour, Commissioner, Australian Securities and Investments Commission, Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission and Janine Ryan, Chief Compliance Officer, ASX, at the Governance Institute's Governance and Risk Management Forum 2021

### Key Takeouts

- Cyber resilience, sustainable finance, the issue of 'greenwashing', and executive remuneration are particular areas of focus for ASIC. ASIC Commissioner Cathie Armour also called on organisations to urgently review their whistleblower policies to ensure they are compliant with current requirements.
- ASX Chief Compliance Officer Janine Ryan provided some insight into responding to ASX queries around 'anomalous' movements on share price and ASX' approach to these queries. Ms Ryan also flagged that companies should focus on ensuring the accuracy of market announcements.
- The ACNC has been developing a new platform that will make it easier way for potential donors to identify the programs being offered by various charities and to make a decision about making a donation

The regulators' panel - Australian Securities and Investments Commission (ASIC) Commissioner Cathie Armour, Commissioner of the Australian Charities and Not for profits Commission (ACNC) Gary Johns, and Chief Compliance Officer ASX Janine Ryan each provided an update on their key areas of focus and a brief recap of their work in 2020.

Some key takeaways from the session are below.

### ASIC's key priorities

- Ms Armour observed that the events of 2020, and the necessity to rapidly adjust to a changed and changing environment, underscores the importance of sound governance and risk management.
- From ASIC's perspective for the year ahead, Ms Armour flagged: cyber resilience; sustainable finance; 'greenwashing'; and executive remuneration as particular areas of focus for the regulator.

#### Cyber resilience

- Ms Armour said that digitisation, accelerated by the pandemic, has raised questions for ASIC around how well organisations protect information and how well businesses and look after consumers.
- Ms Armour said that ASIC has been focused on the issue of cyber resilience for a number of years and continues to push for firms, across the economy, to prioritise the issue. Ms Armour referred the audience to ASIC's 2015 report, Report 429: Cyber resilience: Health check, which she said outlines the questions that the regulator considers boards need to ask, to satisfy themselves that they're 'thinking about cyber resilience in the right way'.
- Ms Armour briefly touched on some of ASIC's recent work including ASIC'c review of the ASX and ASIC's current focus on cyber resilience within larger institutions. Ms Armour flagged that ASIC intends to broaden its focus next year.
- To underscore the importance ASIC places on preparedness/ensuring appropriate systems/processes are in place, Ms Armour briefly touched on ASIC's recent enforcement action (August 2020) against a firm for (alleged) failure to have a cyber resilience program in place (which ASIC alleges is a breach of their licence obligations).
- Ms Armour said that looking ahead, ASIC also expects to be working to support the government's proposed cyber resilience framework for critical infrastructure.

  [Note: This appears to be a reference to the changes put forward in the Security Legislation Amendment (Critical Infrastructure) Bill 2020 which is currently before the House of Representatives.]

- Data management and data security:

- Ms Armour observed that all firms are increasingly dependent on data and that the way in which they deal with that data - how firms govern their data, what information they receive, the rules in place around transmitting the data - is also a focus for the regulator.
- From an internal perspective, Ms Armour said that ASIC is focused on its own systems for governing, storing and mitigating against the risk of data being corrupted/attacked. Referencing the recent Accellion cyber incident, she said that ASIC had had to go through the exercise of having to work out who could have been impacted, how this could be tested. She called on all firms to review their own plans.

- Ms Armour said that operating in a 'coordinated and cooperative way' with the firms it regulates is a challenge for ASIC, noting that often ASIC and the Australian Prudential Regulation Authority (APRA) are regulating the same firms. She said that ASIC and APRA are working closely together to try to avoid duplication as far as possible.

### Sustainable finance: governance, climate disclosure and greenwashing

- Ms Armour said that sustainable finance - how well firms are dealing with climate risk, and in particular, how listed companies have gone about disclosing their climate risk and opportunities – will continue to be a key focus for the regulator. In particular, ASIC is looking at whether companies have appropriate governance structures in place to manage climate risks/transition issues and opportunities.
- TCFD aligned-reporting: Ms Armour said ASIC has observed a 'great deal of investor demand for good climate-related information'. She said that many larger listed entities have responded to this by taking up the TCFD recommendations, which ASIC regards as the 'global standard'. Ms Armour encouraged all organisations to consider doing the same.
- Greenwashing: Ms Armour said that the issue of 'greenwashing', which ASIC regards as another form of misleading conduct, is also a focus for the regulator and has been a focus for international securities regulators for some time. ASIC is currently looking at whether it is prevalent in the Australian market.

### Executive remuneration

- Ms Armour said that ASIC recently looked at executive remuneration within 21 large listed companies and in particular at decision-making around variable remuneration. Ms Armour encouraged firms to review ASIC's information sheet [ASIC Information sheet 245: Board oversight of executive variable pay decisions] on the exercise of board discretion in this context including the specific factors boards should consider when making executive variable pay decisions.

### Call to action on whistleblower policies

- Asked to comment on ASIC's review of whistleblower policies, Ms Armour urged firms to review their current policies to ensure they meet current legal requirements. Ms Armour said that ASIC's review of a wide range of organisations found many (including some larger organisations) did not meet the requirements of the new law and gave a number of examples of the deficiencies observed. Issues identified included: not fully or accurately identifying all the channels open to whistleblowers to make a disclosure, referring to the outdated test and erroneously stating that anonymous reports are not covered. Ms Armour also flagged the use of nondisclosure agreements covering complainants/those who may fit into the whistleblower category as an area that firms should review from a compliance perspective.
- Ms Armour emphasised the need to have compliant policies in place, noting that ASIC receives up to 700 complaints a year.
- Ms Armour said that ASIC is in the process of going back to firms to prompt them to address various deficiencies in their policies and flagged that there are penalties for failure to comply with whistleblower laws. Ms Armour made clear that while currently ASIC is treating the issue as a surveillance exercise, it 'will need to move to enforcement not too far in the future'.

### ASX: Recent changes, areas of focus

- Lodging forms: Ms Ryan noted that ASX has new forms coming online in June 2021 and that the rule framework has been updated to support these changes. She also noted that a test environment and FAQs are now available online.
- Disclosure:
  - Impact of COVID-19: Ms Ryan said that the ASX has not found, generally speaking, that the disruption/uncertainty caused by the COVID-19 pandemic over the course of 2020, has negatively impacted disclosure. She considers that this is because people are 'generally taking their governance obligations very

seriously'. For example, in many cases, firms actively sought to engage with regulators around how to disclose. Looking ahead, ASX considers that the flow on effects from COVID-19 are still 'coming through'.

   - Earnings guidance: Touching briefly on earnings guidance, Ms Ryan said that a number of companies 'prudently withdrew' their guidance last year, due to uncertainty caused by the COVID-19 pandemic and reissued it at a later date. She noted that ASX updated its guidance note [Guidance note 8] to assist companies to understand how to manage earnings surprises.

- New drivers of investment decisions: Ms Ryan said that the ASX has observed changes in the motivations behind investment decision making - for example ASX has started to see social investing – as well as a shift in where investors are finding information/how they are making decisions – for example, social media is playing a larger role. This shift is in some cases, driving rapid shifts in shareprice, an issue that the ASX is working closely with ASIC in monitoring.

- Responding to 'anomalous movement on share price':
   - Commenting briefly on ASX's enforcement approach, where a rapid and unexplained shift in shareprice is identified, Ms Ryan said that the first step for the ASX would be to approach the entity to ask if they are aware of any information that could be impacting the price (generally trading would be halted while this occurs) and then to investigate the cause – for example ASX would investigate whether there is an insider trading issue or potential market manipulation. ASX could also put an entity onto a watch list, which would mean that every announcement would be vetted by ASX, prior to being released to the market (potentially resulting in delays/retractions/changes to announcements before they are released).
   - Ms Ryan said that in the interests of minimising disruption, companies should: a) have a 'good governance' framework in place to minimise disruption caused by an ASX query; b) be 'conscious' of the information published about them on social media/conscious of the information they are publishing through that channel; c) ensure market announcements are 'the source of truth' for investors ie that the information in market announcement s is accurate and not purely promotional in nature.
   - Ms Ryan added that announcements should also avoid 'greenwashing' and/or attempts to capitalise on the COVID-19 pandemic. On this last point, Ms Ryan said that ASX has spent considerable time reviewing announcements to pick up these issues and in many cases, has found that adjustments have been needed to correct misleading information about COVID-19 in particular.

### Australian Charities and Not for profits Commission: A new search platform

- Dr Johns spoke about the new search platform that has been developed to make finding useful information about the work that charities do in a particular area (the programs that charities run) easier to find, and easier to assess.

- Dr Johns said, that the information on the register of charities is very limited in terms of giving people the information they need about a particular charity – there is no mechanism for example, that enables people to search by the area that they would like to donate to (eg dogs) and be able to access information about all the charities that have programs in that area, it's also necessary for people to know the exact name of the charity in order to be able to find any information about it.

- To address this, the ACNC has rolled out a program to enable charities to provide more detailed information about the work that they do and enable the public to access this information via a central platform. The idea is that by September 2021, members of the public will be able to type in the area they're interested in potentially donating to, and be able to see all the programs on offer. Rather than 60,000 charities to search, there will be far fewer prorgrams – the exact number is not year clear - to choose amongst. This is intended to enable potential donors to more easily make a decision about the charity that's right for them.

- Dr Johns also suggested that the new platform will also potentially be of value to charities themselves, as they may not otherwise be aware of the work other organisations are doing in particular areas.

   [Source: This post is based on notes taken during the session: Regulators' update, Chaired by Lyn Nicholson General Counsel, Holding Redlich and featuring panellists, Cathie Armour, Commissioner, Australian Securities and Investments Commission, Gary Johns, Commissioner, Australian Charities and Not-for-profits Commission and Janine Ryan, Chief Compliance Officer, ASX, at the Governance Institute's Governance and Risk Management Forum 2021 17/05/2021]

In Brief | Treasury is seeking industry views on the proposed industry funding levies for the 2021-22 financial year. The total funding needed under the 2021-22 levies for all relevant Commonwealth agencies is now $262m (an 18% increase on the 2020-21 requirement). The deadline for submission is 11 June 2021

[Sources: Treasury consultation; Discussion paper]

# Financial Services

## Top Story | Financial services survey: a look to the future

Following the disruption of 2020, and with the rapidly changing face of financial services, MinterEllison conducted a survey of our financial services clients to determine how the sector is changing in the long term and to identify where the key challenges and opportunities are for the industry.

You can access the results here.

## Hayne recommendations 2.1, 3.2 and 3.3: Financial Sector Reform (Hayne Royal Commission Response—Advice Fees) Regulations 2021 registered

### Hayne Recommendations

- Hayne Recommendation 2.1 recommended that the law be amended to provide that 'ongoing fee arrangements (whenever made): must be renewed annually by the client; must record in writing each year the services that the client will be entitled to receive and the total of the fees that are to be charged; and may neither permit nor require payment of fees from any account held for or on behalf of the client except on the client's express written authority to the entity that conducts that account given at, or immediately after, the latest renewal of the ongoing fee arrangement'.
- Hayne Recommendation 3.2 recommended that 'deduction of any advice fee (other than for intra-fund advice) from a MySuper account should be prohibited'.
- Recommendation 3.3 recommended that 'deduction of any advice fee (other than for intra-fund advice) from superannuation accounts other than MySuper accounts should be prohibited unless the requirements about annual renewal, prior written identification of service and provision of the client's express written authority set out in Recommendation 2.1 in connection with ongoing fee arrangements are met'.

### Regulations registered

The Financial Sector Reform (Hayne Royal Commission Response—Advice Fees) Regulations 2021 (the regulations) were registered on 14 May 2021.

- Schedule 1 of the regulations supports the amendments in Schedule 1 of the Financial Sector Reform (Hayne Royal Commission Response No 2) Act 2021 (the Act) which implements the government's response to Hayne recommendation 2.1 around ongoing fee arrangements.
- Broadly, Schedule 1 specifies the records that fee recipients must keep as evidence of their compliance with the new obligations for ongoing fee arrangements.
- Schedule 2 of the Regulations supports the operation of Schedule 3 of the Act, which implements the government's response to Hayne recommendations 3.2 and 3.3. Schedule 2 of the Regulations enables written consents in relation to financial product advice fees paid out of a superannuation interest to be provided electronically and make consequential amendments.
- Timing:
  - Schedules 1 and 2 will take effect from 1 July 2021.
  - The regulations are due to sunset on 1 October 2031

  [Sources: Financial Sector Reform (Hayne Royal Commission Response—Advice Fees) Regulations 2021; Explanatory Statement]

## Hayne Bill will establish the Financial Regulator Assessment Authority, a new oversight body for ASIC/APRA

### Context

- Hayne Recommendations:

- Recommendation 6.13 recommended that APRA and ASIC 'should each be subject to at least quadrennial capability reviews'.
- Recommendation 6.14 recommended that a new oversight authority, independent of government, should be established by legislation to assess the effectiveness of the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) in discharging their functions and meeting their statutory objects.

- On 31 January 2020 the government consulted on draft legislation to establish a new oversight body – the Financial Regulator Assessment Authority (you can find a brief overview of the proposed reforms in Governance News 5 February 2020 at p11).
- On 29 April 2021, Treasurer Josh Frydenberg announced that the government would introduce legislation 'by the middle of the year', with the new Authority expected to conduct a capability of ASIC within its first year of operation.

### Bills introduced

The Financial Regulator Assessment Authority Bill 2021 gives effect to the government's response to Hayne recommendations 6.13 and 6.14. 1.2 by establishing a new oversight body – the Financial Regulator Assessment Authority (FRAA) – to assess the effectiveness and capability of each of APRA and ASIC.

The Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021 makes amendments consequential to the enactment of the Financial Regulator Assessment Authority Bill 2021.

### Proposed changes

Broadly, the Financial Regulator Assessment Authority Bill 2021 proposes to:

#### Establish the Financial Regulator Assessment Authority (FRAA) and provide for its functions and powers.

- Functions:
  - Biennial reviews: The FRAA will be required to undertake assessments of the effectiveness and capability of APRA and ASIC once every two financial years, beginning on 1 July 2021.
  - Ad hoc reviews: The Minister is also able to request that the FRAA undertake ad hoc reports on matters 'relating to the effectiveness and capability of each regulator'.  The Minister is able to the set the terms of reference.
  - It's proposed that the FRAA will not be permitted to undertake assessments and reviews other than biennially or at the request of the Minister.
  - In addition, it's proposed that the FRAA 'may also have functions conferred by other provisions of the Financial Regulator Assessment Authority Bill 2021 or of another law of the Commonwealth'.
  - The Bill will require the Minister to table a copy of biennial reports in each House of the Parliament.  Ad hoc reports 'may also be tabled in Parliament'.  The FRAA will not be permitted to publish these reports unless the report in question has first been tabled in a House of Parliament or published by the Minister.
- The Bill sets out how members and staff members of the FRAA will be appointed or made available, and how the FRAA will make decisions (including delegations)
- It's proposed that the FRAA will have four members:
  - Three of the members will be 'appointed members' ie appointed by the Minister, including the Chair and two other members
  - The fourth member will be the Treasury Secretary or 'nominated SES [Treasury] employee'.
  - Once established, it's proposed that the new Authority will be 'supported by a secretariat staffed by the Treasury'.
- The FRAA will also be 'treated as part of the Department [ie the Department of Treasury] for the purposes of the Public Governance, Performance and Accountability Act 2013'.
- Limits:
  - The explanatory memorandum states that the new FRAA 'not have the ability to direct, make, assess or comment on specific cases of the regulators' enforcement actions, regulatory decisions, complaints and like matters' to safeguard ASIC and APRA's independence.
  - Further, as ASIC and APRA are independent entities responsible to the Parliament, and not to the FRAA, the FRAA will not have the power to direct the regulators to implement any recommendations it makes.

### Independence

- The Explanatory Memorandum states that 'The Authority will retain strong statutory independence in the preparation and content of its reports and reviews'.
- It will also not be 'subject to directions by anyone, including the Minister, in relation to how a particular assessment is undertaken. It has full discretion in performing its functions and exercising its powers'.
- Having said this, the explanatory memorandum notes that the FRAA will be subject to the Financial Regulator Assessment Authority Bill 2021.

### Information management

- The Bill proposes to introduce a number of safeguards on information provided to the authority by ASIC and APRA and necessary to the performance of its oversight role, which is not 'suitable for publication or further disclosure' ('protected information'). These include:
  - prohibiting the FRAA from including any 'protected information' in a report or review
  - requiring the FRAA to consult with APRA and ASIC (as relevant) to ensure that such information is not included
  - prohibiting the unauthorised use or disclosure of protected information by 'entrusted persons' (contravention of the prohibition is a criminal offence punishable by imprisonment for up to two years).

### Proposed Timing

The Financial Regulator Assessment Authority Bill 2021 commences on the later of the day after that Bill receives the Royal Assent and 1 July 2021.

[Sources: Financial Regulator Assessment Authority Bill 2021; Financial Regulator Assessment Authority (Consequential Amendments and Transitional Provisions) Bill 2021]

## Timeshare industry: A complaint to ASIC lodged by CHOICE calls on the regulator to take action to address (allegedly) widespread poor practice and for a parliamentary inquiry into the sector

- Consumer group CHOICE has made what it describes as a 'super-complaint' to the Australian Securities and Investments Commission (ASIC) about the timeshare industry, alleging that poor practice (possibly in contravention of existing legal requirements) is widespread within the sector and that the 'the timeshare business model is founded on taking advantage of consumers'.
- The complaint is informed by a survey of 350 timeshare members conducted by CHOICE during the period December 2020 and January 2021, which identified various issues across the sector including: a) use of high-pressure sales tactics; b) provision of poor quality financial advice that is not in the best interests of consumers; c) sale of schemes that are often of poor value (eg in 2018 CHOICE found that some contracts were 938% more expensive than booking directly online); and d) long and complex contracts that make exit from the contract difficult/impose 'exorbitant' exit fees.
- The complaint follows four previous complaints sent to ASIC by CHOICE alleging potentially illegal conduct within the industry since 2016.

### Potential breaches of existing laws

The complaint states that certain practices within the timeshare industry potentially breach the following laws.

1. 'hawking of interests in managed investment schemes': s992AA of the Corporations Act 2001 (Cth) (the Corporations Act)
2. 'misleading or deceptive conduct': s1041H of the Corporations Act and s12DA of the Australian Securities and Investments Act 2001 (Cth) (ASIC Act)
3. 'making false or misleading representations or inducing persons to deal': s1041E–1041F of the Corporations Act and s12DB of the ASIC Act
4. 'acting in the best interests of the client': s961B of the Corporations Act
5. 'providing advice if it would be reasonable to conclude the advice is appropriate to the client': s961G of the Corporations Act

6. 'prioritising the client's interest if there is a conflict of interest between the client and the provider': s961J of Corporations Act
7. 'general conduct obligations that require financial services licensees to "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly": s912(A)(1)(a) of the Corporations Act 2001
8. 'unconscionable conduct provisions': s991A of the Corporations Act and s12CA–12CC of the ASIC Act

### Recommended actions to address the (alleged) poor practice within the industry

The complaint argues that the issues identified are 'not isolated case studies. CHOICE has observed so many potential breaches of law that we question whether the timeshare industry should be allowed to operate with existing business practices'.

Specifically, the complaint calls for the following actions to be taken.

- A parliamentary inquiry: The complaint calls on the government to launch a parliamentary inquiry into the sector. It's suggested that this inquiry should focus on the following four areas: a) 'what legislative and regulatory changes are necessary to protect people from harmful timeshare schemes and improve industry practice'; b) 'whether the current regulatory regime is fit for the purpose of protecting people from harmful timeshare schemes'; c) 'the scale and extent of breaches of the law'; and d) 'fair policy options for people seeking to exit title-based timeshare schemes'.
- ASIC should take action: The complaint calls on ASIC to take various actions to address the issues identified in the complaint. These include:
  - prosecuting timeshare operators who 'engage in the hawking of timeshare memberships'
  - working with the timeshare industry to launch a remediation program to compensate those who have been sold a product where there has been a breach of the law
  - launching an investigation into the extent of 'misleading and deceptive representatives made by sales representatives at sales presentations' and taking enforcement action where appropriate
  - taking enforcement action against timeshare operators for 'clear breaches of financial advice laws' eg failure of sales people to act in the best interests of the client
  - commencing surveillance of representations made by timeshare operators that 'trap people into timeshare contracts' and taking enforcement action where appropriate.

The full text of the complaint is here.

[Source: CHOICE media release 18/05/2021; Full text of complaint: The timeshare trap CHOICE super-complaint to ASIC about the timeshare industry May 2021]

## APRA has delayed the roll-out of new restrictions for individual disability income insurance to 1 October 2022 to enable more time for the sector to comply

- The Australian Prudential Regulation Authority (APRA) has issued a letter to life insurers and friendly societies confirming its decision to postpone the deadline for the implementation of the policy contract term measure for individual disability income insurance (IDII) to 1 October 2022.
- APRA made the decision after engagement with the Financial Services Council and other stakeholders identified that 'industry is unlikely to be able to develop viable solutions for implementing the measure by APRA's previously communicated deadline of 1 October 2021'.
- APRA now expects life companies to 'intensify their efforts to explore and develop workable solutions to meet the intention of APRA's policy contract term measure and to proactively keep APRA informed of progress'.
- The letter states that 'all of APRA's other IDII product measures, as communicated in APRA's 30 September 2020 letter (here), will still take effect on 1 October 2021'.

[Source: APRA letter to industry 12/05/2021]

## Preparing for APRA connect: APRA has released further information to assist entities

- The Australian Prudential Regulation Authority (APRA) has published further information to assist entities in preparing for APRA Connect.

- The first data collections to be introduced in APRA Connect when it goes live in September 2021 will be the Superannuation Data Transformation collections.
- APRA intends to make a test environment available from 17 June 2021 to help users become familiar with APRA Connect and enable them to trial submission of data before they need to submit in the APRA Connect production environment from 13 September 2021.

[Source: APRA media release 17/05/2021]

## In Brief | Financial advice: FASEA has approved new qualifications from Southern Cross University and the Australian Institute of Management which will enable advisers to meet the required education standard

[Sources: FASEA media release 14/05/2021; Full list of approved degrees, bridging courses and graduate diplomas]

## In Brief | Open banking: The ACCC has released guidance for data holders in the banking sector to support compliance with their obligations under the Consumer Data Right Rules and Standards. Separately, the ACCC has also released guidance to assist ADIs to identify whether they have data holder obligations in relation to particular brands or branded products they are associated with

[Sources: ACCC compliance guidance for data holders; ADI responsibility for Data Holder Brands]

## In Brief | AFCA has announced that Professor John Pollaers (Chancellor of Swinburne University of Technology and Chair of the Australian Advanced manufacturing Council) has been appointed the new AFCA Chair, replacing current Chair Helen Coonan, following her term in office

[Source: AFCA media release 17/05/2021]

## In Brief | Bill to pause indexation for private health insurance income threshold introduced: The Private Health Insurance Amendment (Income Thresholds) Bill 2021 proposes to extend the current pause on the annual indexation of income thresholds for another two years, and recommence annual indexation thereafter

[Source: Private Health Insurance Amendment (Income Thresholds) Bill 2021]

## In Brief | APRA has written to ADIs setting out its expectations for the market risk modelling of risks not in VAR (RNIV) with the aim of improving 'the consistency of the application, capitalisation and reporting of RNIV for ADIs accredited to use the internal model approach (IMA) to traded market risk'

[Source: APRA letter to industry 18/05/2021].

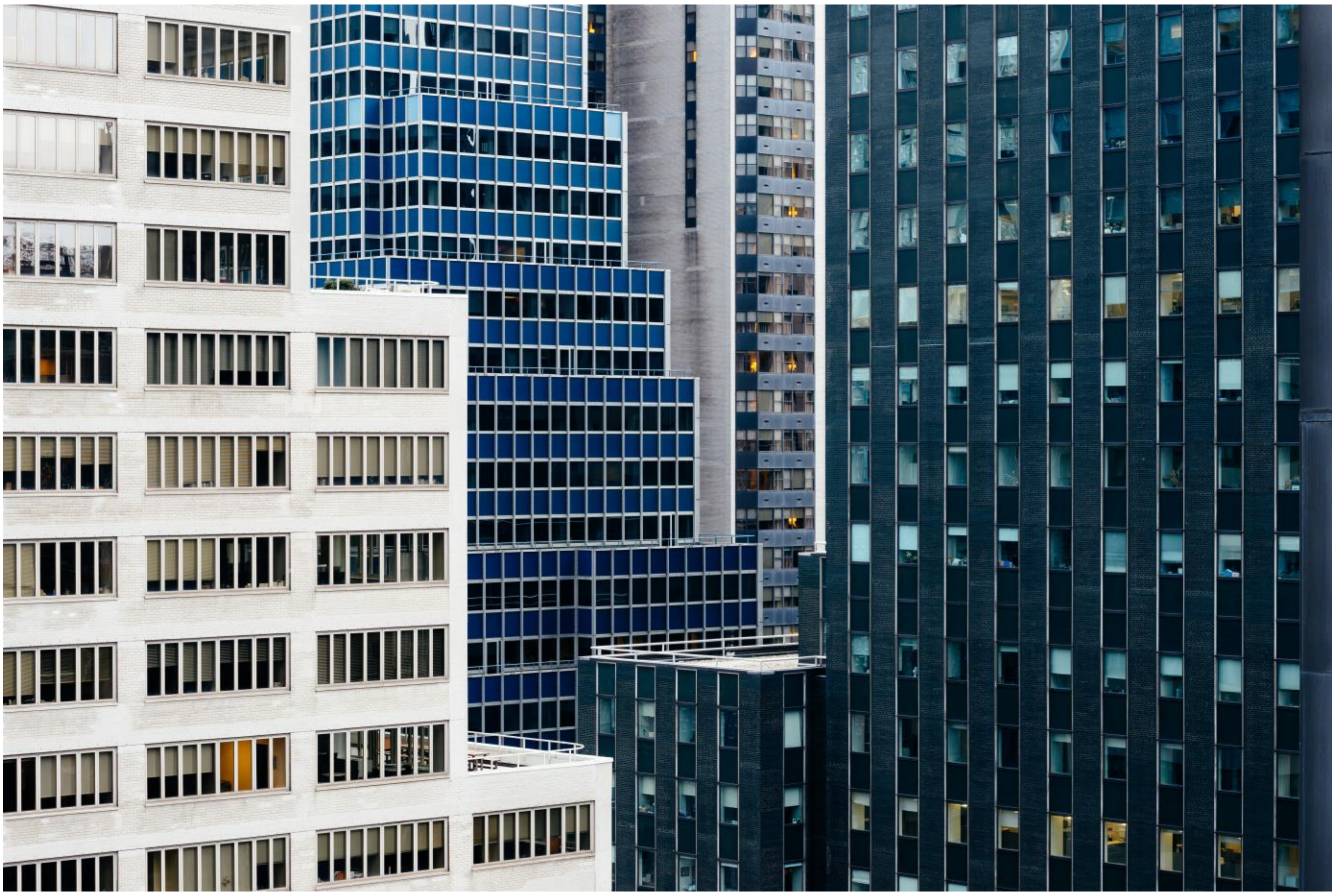
# Accounting and Audit

## Auditor independence: Duration of two instruments reduced from five to three years

ASIC Corporations (Amendment) Instrument 2021/381 amends the ASIC Corporations (Auditor Independence) Instrument 2021/75 and ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195 to reduce the duration period of each instrument from five to three years.

- 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. The repeal date for this instrument has been changed from 30 April 2026 with 30 April 2024.
- ASIC Corporations (Parent Entity Financial Statements) Instrument 2021/195 allows a parent entity which is required to include consolidated financial statements in its financial report to also include its single entity financial statements in that report. The repeal date for this instrument has been changed from 1 April 2026 to 1 April 2024.

[Sources: ASIC Corporations (Amendment) Instrument 2021/381; Explanatory Statement]



# Risk Management

## Expert insights into the role and value of ethics in the boardroom

A brief overview of some of the key points from the Leadership Q&A discussion, Chaired by Governance Institute CEO Megan Motto and Head of the Ethics Alliance and Director, The Banking Finance Oath Cris Parker at the Governance Institute's Governance and Risk Management Forum 2021

### Key Takeouts

- A strong ethical framework is key to maintaining a social licence to operate, building a strong culture and informing (and if necessary justifying) decisions
- A key challenge for boards is recognising the need to upskill when it comes to navigating the challenges of dealing with complex stakeholder demands – yet, this is an area where additional training/upskilling could add value

In a wide-ranging discussion, Governance Institute CEO Megan Motto spoke with Head of the Ethics Alliance and Director of the Banking Finance Oath Cris Parker, on the role of ethics in corporate Australia, including in the context of crisis management and crisis preparation.

Some key takeaways from the discussion are below.

- **The challenges of taking into account a broad range of stakeholder views:** Asked to comment on navigating the shift towards stakeholder (as opposed to shareholder) primacy, Ms Parker observed that the shift toward stakeholder primacy poses particular challenges for directors who are now responsible to a broad range of stakeholders for their actions rather than just to shareholders. Ms Parker suggested that boards should be questioning whether they are sufficiently and consciously 'attuned' to the needs/expectations of these different stakeholder groups and taking steps to ensure that they have the skills to be able to work through increasingly complex problems. She observed that though generally boards are prepared to spend funds on training for executives, they are often reluctant to spend money on upskilling themselves. She encouraged boards to consider whether this may be needed.
- **The challenge of admitting vulnerability as a director:** Ms Motto commented briefly on the reluctance on the part of some boards admit to vulnerability/the difficulty of admitting a need to upskill, given the assumption held by many people that boards are expected to already have the necessary skills/knowledge to execute their duties. Ms Parker was asked to comment on how boards can create the 'psychological safety' - the belief that one can speak up without risk of punishment or humiliation - to have a conversation around particular areas of vulnerability/the safety to seek upskilling. Ms Parker responded by referencing the work of Amy Edmondson on the issue. For example, she suggested that boards should not assume that everyone has the same needs, that everyone works differently, and that directors should encourage healthy conflict and foster curiosity including fostering an environment where people feel safe to ask questions (even when they are uncomfortable). She also suggested that boards should focus on the purpose, values and principles of the organisation.

  [Note: The reference to Amy Edmondson's work was not specific. You can find a recent article by the author discussing the issue of psychological safety entitled 'What Psychological Safety Looks Like in a Hybrid Workplace' in Harvard Business Review here.]
- **The challenges of keeping a social licence to operate:** Ms Motto asked Ms Parker to comment on how organisations can maintain their social licence to operate in the current challenging environment, and given the many variables (eg the many stakeholder views) that directors need to balance/consider. Ms Parker said that an organisation's ethical framework – having a clear set of core values and principles/standards underpinning policies/procedures and decision making, stands organisations in good stead as once this f is in place everything is then passed through it. Ms Parker also observed that from a board/organisational perspective, a strong ethical framework provides certainty that 'if someone doesn't like it – it doesn't mean you have been unethical. You cannot be accused of lacking integrity' because every decision/policy/procedure has had an ethical lens applied to it. As an example, she suggested that where boards take a stance on a particular social issue – if they can articulate clearly their rationale for doing so, if it is consistent with their ethical framework, values and purpose, then regardless of whether every stakeholder agrees with it, the board can be confident that it does have a clear rationale that is consistent with the purpose/strategy/values of the organisation. This, she suggested, provides a stronger justification to stakeholders than the alternatives.

- **How can boards do better on meeting the expectations of stakeholders, from an ethical standpoint?** Ms Parker was asked to comment on how organisations can 'capture what the moral compass is in society' in light of the many examples of ethical failures across firms, professional institutions and others. Ms Parker questioned whether there are actually more instances of unethical failure or whether it's merely that the examples are more readily identifiable and prominent given the availability of information and whether we as a society are also less willing to accept certain behaviour. Commenting briefly as a contributor to the development of the Banking and Finance Oath, Mr Parker commented that every decision is a demonstration of values, and goes to developing broader behavioural practice within an organisation. To put it another way – the standards you and more broadly the organisations walks past are ultimately the standards that the individual and more broadly the organisation accepts. Adding to this, Ms Parker said that generally people have fallen into behaving like customers rather than responsible individuals – she observed that, we need to be treated as individuals with respect and we also need to behave that way.
- **The link between 'well composed' boards and stronger ethical outcomes:** Asked to comment on whether she had any evidence that well-composed boards deliver better ethical outcomes, Ms Parker said that she personally does not sit in boardrooms and therefore cannot comment from her own knowledge. However, she said that she has observed that in organisations where board Chairs are alive to/invest actively in understanding the complexity of stakeholder needs, and the breadth of stakeholder needs, their organisation do not appear to suffer the ethical breakdowns that have occurred at other organisations. Adding to this, Ms Motto said that it is difficult to find empirical data around linking outcomes and ethical decision making, however she said that research has found a link between business sustainability and good governance. Commenting briefly on the shareholder vs stakeholder primacy debate, Ms Motto observed that in the view of the Governance Institute, taking a long-term view necessitates organisations taking stakeholder concerns into account (as opposed to taking into account only the views of shareholders).
- **The role of boards in contributing to a culture of integrity:** Asked to comment on how boards are contributing to a culture of integrity within organisations, Ms Parker said that boards are asking more questions and insisting on hearing the bad news. There has also been a change in attitudes, she said, towards transparency/disclosure. Increasingly more information is being made available for example through websites around employee feedback and increasingly companies are owning and interacting with that feedback (even where it may be uncomfortable).
- **The importance of diverse viewpoints:** In closing, Ms Parker underlined the value, from an ethical standpoint, in hearing different perspectives and looking outside individual sectors. Ms Parker said that if business is trying to become part of the ecosystem of society then it needs to embed ethics within it in the context of everyday decision making/behaviour – not just in an emergency. Ms Motto agreed with this commenting that 'it's about the quiet moments, not just the burning platform'.

  [Source: This post is based on notes taken during the session: Leadership Q&A, Chaired by Governance Institute CEO Megan Motto and head of the Ethics Alliance and Director, The Banking Finance Oath Cris Parker at the Governance Institute's Governance and Risk Management Forum 2021 17/05/2021]

## Cybersecurity, Technology and Privacy

### US Presidential Order includes a range of measures to strengthen the US government's response to cyber incidents and mandates new rules for government software

#### Key Takeouts

- Among other things, the Executive order will establish a new air-accident style cyber-review board (the Cybersecurity Safety Review Board), establish new baseline security standards for the development of software sold to the government and roll out a pilot 'energy star' type label for software to enable the government and the public, to quickly determine whether it was developed securely

Following recent cybersecurity incidents including the SolarWinds, Microsoft Exchange and Colonial Pipeline incident, US President Joe Biden has signed an executive order to strengthen America's cybersecurity defences and better protect federal government networks.

Specifically, the Executive Order will:

- remove contractual barriers that can prevent IT Service Providers from being able to voluntarily share certain threat information with the government
- introduce a new requirement for IT Service Providers to share breach-related information with the government where it could impact government networks
- establish a new Cybersecurity Safety Review Board (CSRB). The CSRB will be modelled on the National Transportation Safety Board (which is used after aircraft crashes and other incidents), and will be tasked with analysing significant cybersecurity incidents and making recommendations for strengthening security. The CSRB will be co-chaired by 'government and private sector leads'
- strengthen cybersecurity standards in the federal government by: a) moving the Federal government to secure cloud services and a zero-trust architecture; and b) mandating deployment of multifactor authentication and encryption with a specific time period.
- improve software supply chain security by establishing baseline security standards for development of software sold to the government. These new standards include requiring developers to 'maintain greater visibility into their software and making security data publicly available'.
- roll out a pilot 'energy star' type label for software to enable the government and the public, to quickly determine whether it was developed securely.
- establish a 'standard playbook for responding to cyber incidents' and a set of definitions for cyber response by federal departments and agencies. This is intended to ensure Federal agencies meet a certain minimum threshold and are prepared to take uniform steps to identify and mitigate a threat. The playbook is also intended to provide a template for use by the private sector to guide its response efforts.
- improve detection of cybersecurity incidents on Federal government networks by 'enabling a government wide endpoint detection and response system and improved information sharing within the Federal government'.
- improve investigative and remediation capabilities by introducing new cybersecurity event log requirements for Federal departments and agencies.

According to the fact sheet, the measures in the Executive Order are the first of 'many ambitious steps' to strengthen America's cyber defences.

The fact sheet also calls on the private sector to take steps to toughen their own defences in the interests of minimising future incidents noting that much of America's domestic critical infrastructure is owned and operated by the private sector.

[Source: White House Fact Sheet: President Signs Executive Order Charting new course to improve the nation's cybersecurity and protect Federal government networks 12/05/2021]

## Scam alert: ASIC issues warnings to consumers

### Suspicious website alert: limstonefx.com

- The Australian Securities and Investments Commission (ASIC) has issued a 'suspicious website alert' for: limestonefx.com after receiving reports from people who invested via the website, that they have been unable to withdraw their investments.
- According to ASIC, though the website claims that it is associated with Limestone FX Pty Ltd (an authorised representative of Australian Financial Services Licensee Baileyhenry Capital Group Pty Ltd) both Limestone FX Pty Ltd and Baileyhenry Capital Group Pty Ltd have given confirmation to ASIC that this is not the case.
- ASIC is warning consumers not to deal with the website.
- ASIC directs anyone who has invested via the website to contact their financial institution to request assistance. ASIC observes that as the operators of the website 'appear' to be located outside Australia, and that consequently recovering funds will be 'challenging.

### Avoiding scams

ASIC encourages investors to take the following steps to help avoid the risk of falling victim to financial scammers.

- obtain independent financial advice before investing

- check ASIC's registers to confirm whether the entity holds an Australian Financial Services Licence (though this information does not guarantee that the entity is not impersonating an AFS licensee)
- check that the contact details provided for the entity are consistent with publicly available details for the licensee and confirm with the licensee that any communications from the entity are legitimate
- consider where you are being asked to send your funds – AFS licensees are required to pay funds into a trust account at an Australian ADI, held in the name of the financial services provider

[Source: ASIC media release 11/05/2021]

### SMSF rollover scam alert

Separately, ASIC has cautioned consumers that it is aware that SMSF rollover scammers are targeting Australian investors' superannuation savings.

The scam works as follows.

- The scammers cold call/email people, posing as financial advisers, and persuade them (often through a promise of high returns) to establish a self-managed super fund (SMSF) and to transfer their existing superannuation balance into it. ASIC notes that scammers often use company names/email addresses and websites that are similar to legitimate Australian companies to reassure investors.
- The scammers then set up an SMSF, including creating a separate SMSF bank account in the investors' name. According to ASIC, scammers often use a 'legitimate' company to ensure that the SMSF they establish is compliant with Australian laws.
- The scammers then use the identification documents provided by the person to set up the SMSF, to transfer money from the person's existing super fund, into the SMSF account (over which they have full control).

ASIC advises consumers who are contacted by any person/company encouraging them to open an SMSF and move funds, to undertake inquiries to ensure the scheme is legitimate before providing personal information.

[Sources: ASIC media release 13/05/2021; 13/05/2021]

## In Brief | Losses to cryptocurrency investment scams up nearly 1000% on the same period last year: The US Federal Trade Commission has cautioned consumers that the number of cryptocurrency investment scams has 'skyrocketed' with almost 7000 consumers reporting losses totalling more than $80m since October 2020

[Source: FTC media release 17/05/2021]

## In Brief | Draft UK Online Safety Bill would impose new duties on providers of internet services, backed by substantial fines, which would (among other things) require them to: a) remove and limit the spread of illegal and harmful content (eg child sexual abuse, terrorist material and suicide-related content); and b) take responsibility for tackling fraudulent user-generated content on their platforms (eg romance scams/investment scams)

[Sources: Department for digital, culture, media and sport media release 12/05/2021; Consultation: Draft online safety Bill home page; Draft Online Safety Bill; Draft explanatory notes]

## In Brief | US bankers rate cybersecurity as the top threat for the sector in 2021 according to a new report

[Source: CSI Report: 2021 Banking Priorities]

## No investment in new fossil fuel supply projects from now on? New IEA report maps out the changes needed to achieve the global goal of limiting global warming to 1.5 degrees, the ACCR has called on ASX listed companies to 'abandon all new fossil fuel projects'

- A report from the International Energy Agency (IEA) – Net Zero by 2050 A Roadmap for the Global Energy Sector - concludes that current global climate commitments are insufficient to achieve the global target of limiting global warming to 1.5 degrees. The report puts forward a roadmap for the changes to current policy required to achieve this goal.
- The Roadmap sets out 400+ 'milestones' to guide the global journey to net zero by 2050.
- These milestones include (among others):
  - no investment in fossil fuel supply projects from now on
  - no further 'final investment decisions for new unabated coal plants' from now on
  - zero sales of new internal combustion engine passenger cars by 2035
  - the global electricity sector achieving net-zero emissions by 2040
- Responding to the release of the report, BankTrack said that it confirms that expansion of fossil fuel projects/financing of fossil fuel projects can not be consistent with the goals of the Paris Agreement, and called on banks to realign their strategies/operations/financing decisions accordingly.

  > 'Banks can no longer argue that they can align their business model with the goals of the Paris agreement unless they stop all financing for fossil fuel expansion. This means no finance for new fossil fuel projects, and no finance for companies expanding fossil fuel extraction and infrastructure along the whole fossil fuel value chain…Any bank that proceeds with financing new fossil fuel projects and infrastructure is undermining the global effort to stop climate chaos. The capital being injected into the fossil fuel industry needs to be urgently redirected to support a massive build-out of clean energy. The task for banks is clear: finance our future, not fossil fuels'.

### ACCR calls on ASX listed companies to 'abandon all new fossil fuel projects'

In a statement in response to the report, The Australasian Centre for Corporate Responsibility (ACCR) issued a call to all ASX-listed companies to 'abandon all new fossil fuel projects, as per the International Energy Agency's 'Net Zero by 2050' report'.

In a short statement, As You Sow welcomed the release of the report stating that it leaves no room for energy companies not to set net zero targets and develop credible transition strategies.

President of As You Sow Danielle Fugere said,

> 'This new net-zero scenario from the IEA finally aligns with investor expectations and makes abundantly clear to fossil fuel companies that they must set net-zero targets, develop a clear transition strategy, and evolve in step with the decarbonizing global economy. Standing in the way of progress is no longer acceptable for companies' own enterprise success or for the global economy.'

> [Sources: IEA media release 18/05/2021; Full text report; BankTrack blog 18/05/2021; ACCR media release 19/05/2021; As You Sow media release 18/05/2021]

## The Plastic Waste Makers Index identifies the 'root causes' of the plastic waste crisis and calls for urgent action to address the issue

The Minderoo Foundation's Waste Makers Index identifies the 'root causes' and the scale of the global plastic waste crisis and calls for urgent action to address the issue.

### Key Findings

- The problem: Single use plastics account for the majority of plastic that is thrown away globally – more than 130m metric tonnes in 2019. According to the report, these plastics are the most likely to end up in the ocean where they break down into particles that impact the health of wildlife as well as the ocean's ability to store carbon. If growth of single use plastic continues at current rates, they could account for 5-10% of the world's GHG emissions by 2050.

- Source of the problem: The report found that the source of 50% of all single-use plastic thrown away globally can be traced to only 20 companies that produce the polymers that form the building blocks of all plastics. To date, regulation has tended to focus on companies that sell finished plastic products, rather than on these companies at the base of the supply chain.
- Enabling the continued production of single-use plastics: 20 global banks provide 60% of the funding of single-use plastic production globally, and 20 asset managers hold over US$300bn worth of shares in the parent companies of polymer producers
- Failure to transition away from fossil-fuel based feedstocks: The 100 largest polymer producers continue to heavily rely on fossil-fuel based feedstocks. Recycled plastic or feedstocks account for no more than 2% of global single-use plastic production.
- Continued planned expansion: In the next five years, global capacity to produce virgin polymers for single-use plastics could expand by 30%.

### Call for change

The report calls for:

- The introduction of new disclosure requirements for petrochemical companies that would require them to disclose their 'plastic waste footprint' and commit to transitioning away from fossil fuels towards circular models of plastic production
- Banks and investors to shift capital, investments and finance to companies using recycled plastic feedstocks

Commenting on the report, Dr Andrew Forrest, Chair and Co-Founder of the Minderoo Foundation underlined the urgent need for action on the issue.

> 'The plastification of our oceans and the warming of our planet are amongst the greatest threats humanity and nature have ever confronted. Global efforts will not be enough to reverse this crisis unless government, business and financial leaders act in our children's and grandchildren's interests. This means: stop making new plastic and start using recycled plastic waste, it means re-allocate capital from virgin producers to those using recycled materials, and importantly, it means redesign plastic so it does no harm and is compostable, so like every other element, it returns to its original molecules, not nano-plastics. And we must act now. Because while we bicker, the oceans are getting trashed with plastic and the environment is getting destroyed by global warming.'

[Sources: BankTrack media release 18/05/2021; Minderoo Foundation report: Waste Makers Index]

## 100% recyclable, re-useable or compostable plastic by 2025? ANPAC Plastic Pact launches with the support of major players across the plastic supply chain

### A circular economy for plastic

The ANZPAC plastic pact has launched in Australia. The initiative is part of the Ellen MacArthur Foundation's global Plastics Pact Network, which ANZPAC describes as 'a globally aligned response to plastic waste and pollution that unites over 550 member organisations behind the shared vision of a circular economy for plastic, where it never becomes waste or pollution'.

The aim of ANZPAC is to set ambitious targets to eliminate plastic waste by 2025.

### Targets

Members of the initiative have agreed to work towards achieving the following 'actionable targets' by 2025:

- 100% of plastic packaging to be reusable, recyclable or compostable packaging by 2025
- elimination of 'unnecessary and problematic plastic packaging' through use of alternatives, reuse, redesign
- achieve a 25% uptick in the amount of plastic packaging collected and effectively recycled 'for each geography within the ANZPAC region'
- achieve an average of 25% recycled content in plastic packaging across the region.

A 'roadmap' for achieving these targets is now being developed.

### Reporting on progress

Members of the initiative have agreed to provide information about their progress towards achieving these targets. Including for example answering questions about:

- the source of plastic in their  packaging (whether it be recycled content or virgin material) as a percentage of total packaging weight
- the activities and progress they have made toward increasing the percentage (on average and by weight) of 'postconsumer recycled content' across all plastic packaging by 2025.

It is yet to be decided whether single-use plastic products (eg straws, cutlery, cotton buds etc) are included within the definitions of packaging for ANZPAC reporting purposes.

### Participants in the initiative

The initiative has the support of a range of Australian, New Zealand and Pacific Island based businesses from across the plastic supply chain from retailers (eg Australia's major supermarkets) to manufacturers as well as well as other stakeholders.  You can find the full list of members here).

[Sources: ANZPAC Plastics Pact media release 18/04/2021; FAQs]

## Private sector climate initiative continues to gain momentum: 20 organisations are now supporting deeper Australian emissions reductions through Climate League 2030

- The Climate League 2030 initiative, which launched in 2020, is a private sector initiative that is pushing for Australia to adopt and take the necessary actions to achieve Paris-aligned emissions reductions by 2030 – that is, a reduction of at least 230 million tonnes a year by 2030.
- Participants in the initiative pledge to support this goal, commit to taking at least one new action a year themselves to contribute towards achieving it and to reporting on their progress.
- The initiative originally launched with investors and has now expanded to include banks, insurers and companies. In total, 20 organisations have now jointed, with the investors involved collectively responsible for over $910 billion in assets under management.
- The latest round of new signatories includes the initiative's first banking participant: Teachers Mutual Bank Limited. Teachers Mutual is aiming to deliver an additional $20 billion in Certified responsible investment products by 2030 that have zero fossil fuel industry investment.
- You can find more details about the initiatives, including a full list of participants and the actions they are taking here.
- Commenting on the growing support for the initiative, Investor Group on Climate Change Chief Executive Officer, Emma Herd said,

> 'The fresh commitments to the initiative from ISPT, Teachers Mutual Bank Limited, TelstraSuper and U Ethical demonstrate the responsible and practical actions these organisations are taking to address climate risk and help achieve the goals of the Paris Agreement.  End-of-decade goals to reduce emissions have come into sharp focus with new commitments emerging from the US, Canada, Japan and the European Union in recent weeks.  The Australian private sector must be ready to help our country achieve deeper emissions reductions this decade as part of an orderly transition to net zero emissions by 2050.  We look forward to Climate League 2030 continuing to grow across the year as we welcome further participants in the lead up to COP26 in Glasgow.'

[Sources: Investor Group on Climate Change, Climate League 2030 media release 17/05/2021; Climate League 2030]

## LEAD on climate 2021 initiative: US business leaders urge lawmakers to take urgent climate action for a third consecutive year

Representatives from more than 80 of the largest US-based businesses and investors (full list of participating businesses here) with a combined annual revenue of $1.5 trillion are urging US lawmakers to support a 'robust infrastructure package' to tackle 'the climate crisis, create new jobs and advance environmental justice' for the third consecutive year.

More particularly, the group is calling on lawmakers to:

- enact policies to mitigate climate risk and meet the federal climate emissions reduction target of at least 50% below 2005 levels by 2030, on the path to net zero emissions by 2050
- ensure infrastructure investments prioritise: 1) emissions reductions; 2) well-paid 'clean energy' jobs; and 3) environmental justice
- 'build back better' - create a 'more just and resilient economy that addresses the urgent threat of climate change'

You can find out more about the LEAD on Climate 2021 initiative here.

[Source: Ceres media release 12/05/2021]

## Tracking global efforts to oppose the financing of fossil fuel projects by banks: New platform launched

BankTrack has launched a new platform - The Fossil Banks No Thanks platform – that provides a central hub to monitor global campaigns being led by various organisations against financing by banks of fossil fuel projects globally, as well as various publications and data on financing for fossil fuels by individual banks and an overview of upcoming bank AGMs and resolutions.

[Source: Fossilbanks media release 18/05/2021]

## In Brief | Cleaner air Bill: A private members' Bill – the Protection of the Environment Operations Amendment (Clean Air) Bill 2021 – is currently before the NSW House of Representatives. The Bill aims to improve air quality in NSW by 'standardising allowable concentrations of emissions of air pollutants from the remaining coal-fired power stations in New South Wales'

[Sources: Protection of the Environment Operations Amendment (Clean Air) Bill 2021]

# Insolvency and Restructuring

## New UK Bill targets 'unfit' company directors who elect to wind up their companies to avoid paying creditors, including avoiding repaying COVID-19 loans

### Key Takeouts

- Former directors of dissolved companies could face disqualification for up to 15 years if they are found to have misused the insolvency process
- It's proposed that the Bill will operate retrospectively. Among other things, the measures are intended to enable action to be taken against directors who sought to avoid paying back their pandemic loans

A new Bill – Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill – has been introduced into the House of Commons. The Bill proposes, among other things, to introduce measures designed to deter directors from inappropriately winding up their companies/engaging in phoenixing in order to avoid repaying creditors.

Broadly, the Bill proposes to enable the Insolvency Service to:

- Investigate the conduct of former directors of dissolved companies (without having first to restore the company to the register)
- Seek their disqualification for up to a maximum of 15 years (where appropriate), with breach of an order constituting a criminal offence. A disqualification order prohibits the person from acting in the promotion, formation, or management of a company for the period of the order without the court's leave.
- Seek compensation where their actions have led to losses to creditors of dissolved companies.

The Bill is also intended to prevent the former directors of dissolved companies from engaging in phoenixing – ie setting up a new and near identical business in order to avoid paying creditors.

It's proposed that the measures will operate retrospectively which would enable for example, the Insolvency Service to investigate directors who have inappropriately wound-up companies that have benefited from COVID-19 Bounce Back Loans.

Business Secretary Kwasi Kwarteng said that the measures are important from a public trust perspective.

> 'As we build back better from the pandemic, we need to restore business confidence, but also people's confidence in business - which is why we will not hesitate to disqualify directors who deliberately leave employees and the British taxpayer out of pocket. We are determined that the UK should be the best place in the world to do business. Extending powers to investigate directors of dissolved companies means those who have previously been able to avoid their responsibilities will be held to account'.

Commenting on the Bill Director of Policy and Corporate Governance at the Institute of Directors, Dr Roger Barker said,

> 'Company directors fulfil a central role in ensuring that their businesses are well governed. Although corporate dissolution may be inevitable in some cases, it should only be used as a last resort – after all other realistic avenues for protecting the interests of stakeholders have been exhausted. Using company dissolution as a mechanism for the evasion of a directors' duties has no place in the governance of a responsible enterprise'.
>
> [Sources: Insolvency Service press release 12/05/2021; Rating (Coronavirus) and Directors Disqualification (Dissolved Companies) Bill; Explanatory notes]

# Other News

## Should there be a law to stop businesses from acting unfairly? Consumer group calls for views on the introduction of an unfair business practices prohibition in Australia

As part of its work on investigating how an unfair business practices prohibition would work in Australia, consumer group CHOICE has launched a survey seeking views on: a) whether there should be law against businesses acting unfairly; and b) what consumers consider to be unfair business practices. CHOICE is also inviting feedback around individual's own experiences of unfair treatment.

Commenting briefly on why CHOICE launched the survey, CHOICE campaigner Amy Pereira said,

> 'Currently, there's a big gap in the Australian Consumer Law when it comes to protecting Australians from unfair practices. We want to know whether Australians think unfair business practices should be illegal. We know that there are a number of unfair practices that are really harmful to the community, but they don't fit neatly into the consumer law. This means that Australians aren't protected from these detrimental practices that can leave people feeling powerless and exhausted'.

CHOICE also observes that previously the Australian Competition and Consumer Commission (ACCC) has advocated for the introduction of an unfair business practices prohibition, and that where an explicit prohibition has been introduced in other jurisdictions (eg the US, the UK and Canada) it has 'seen great success'.

You can access the survey here.

[Source: CHOICE media release 19/05/2021]

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