Governance News

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

5 May 2021

Contents

Remuneration

APRA consults on draft remuneration guidance: final guidance and final standard to be released H2 2021

Key Takeouts

- Ahead of releasing a final updated remuneration standard (CPS 511), APRA has released draft guidance for consultation, aimed at clarifying APRA's expectations around how entities are expected to translate the principles in the draft standard into practice.
- Among other things the draft guidance sets out APRA's expectations around the use of non-financial performance measures, including guidance on according them 'material weight' as well as APRA's expectations around applying pay consequences.
- The deadline for submissions on the draft guidance is 23 July 2021.
- APRA intends to release final versions of both CPS 511 and CPG 511 in H2 2021.

The Australian Prudential Regulation Authority (APRA) is consulting on draft guidance – [draft] CPG 511 – which sets out principles and examples of better practice to support entities to comply with new requirements in (still draft) remuneration standard CPS 511 (you can access our brief overview of CPS 511 here).

Consultation on the proposed draft guidance closes on 23 July 2021.

Context: Finalising the new prudential standard CPS 511

- For clarity, APRA is still in the process of reviewing feedback provided in response to the second round of consultation on draft CPS 511, but the regulator has indicated that based on a 'preliminary review' of submissions, it 'does not expect to make material revisions to the current proposals'.
- APRA plans to release both the finalised standard and guidance later in the year ahead of the phased implementation of the new requirements from 1 January 2023.
- In a recent speech, APRA Chair Wayne Byres commented the draft CPG 511 is designed to provide guidance around how entities are expected to translate the principles in CPS 511 into practice, 'particularly as many boards are not sitting and waiting for the final standard to be released, and want to get on and make changes to their arrangements now'.

Overview: Draft CPG 511

A principles based, flexible and proportionate approach

Consistent with the approach in draft CPS 511, the draft guidance is principles-based with APRA expecting boards to 'to determine how to apply these principles in a way that is appropriate to their entity's business model and particular risks'. Boards are expected to apply the guidance to their own circumstances.

What's in the guidance?

Broadly, the guidance covers:

- the role of the board in overseeing the remuneration framework and ensuring it remains fit for purpose as well as the board's role in exercising its discretion to adjust remuneration where appropriate in the circumstances
- APRA's expectations around implementing, maintaining and reviewing a remuneration framework in line with the requirements in draft CPS 511
- APRA's expectations around the use of non-financial performance measures, including guidance on according them 'material weight'

APRA states in drafting the CPG 511, particular attention was given to areas where greater clarity was requested, as well as to addressing the findings from the Hayne Commission and the principles for sound compensation practices of the Financial Stability Board.

The role of the board

Draft CPS 511, makes clear that APRA considers that the board bears ultimate responsibility for overseeing an entity's remuneration framework, including the effective application of that framework.

Ensuring appropriate oversight mechanisms are in place

- Draft CPS 511(once finalised) will require that significant financial institutions (SFIs) establish a Board Remuneration Committee (RemCo) to oversee the design and implementation of the remuneration framework. The guidance suggests that as a matter of prudent practice, boards should ensure RemCo members have the appropriate skills, experience and expertise to 'exercise competent and independent judgement' including a 'clear understanding of what constitutes good risk'.
- For non-SFIs (which are not required to establish a RemCo), the guidance suggests that boards nevertheless need to ensure that 'due consideration is given to the oversight of the remuneration framework and key remuneration decisions', consistent with the requirements in draft CPS 511.

Ensuring alignment between remuneration and risk

- APRA expects the RemCo (or other oversight function) to have an understanding of the performance and risk outcomes for persons in specified roles as well as for the entity overall.
- The draft guidance makes clear that APRA expects that this assessment of performance would not be based solely on self-assessments but include direct input from senior risk management personnel. The draft guidance suggests that 'good practice' would be for 'risk and internal audit executives to present a comprehensive assessment of key risk and audit metrics on at least an annual basis, to inform remuneration considerations'.
- APRA further suggests that joint meetings between the board risk committee and the RemCo could be useful in ensuring that the RemCo has insight into risk considerations. APRA comments that it does not consider it would be 'prudent to rely on cross-membership between the RemCo and the board risk committee as the sole means of providing a view on risk'.

Boards are expected to take a proactive approach to challenging recommendations and (where appropriate) exercising their discretion to reduce variable remuneration

- Draft CPG 511 provides some guidance around the circumstances in which APRA considers it may be appropriate for boards to exercise their discretion to reduce variable remuneration. APRA suggests that circumstances in which this could be expected to be appropriate include:
  - 'a) material cases of adverse risk or conduct outcomes, especially where these have impacted the entity's prudential standing or prudential reputation;
  - b) periods of stress in which the entity may be experiencing negative financial performance and erosion of its regulatory capital base; and
  - c) periods of stress in which the entity is provided with exceptional public sector support'.
- Pre-emptive action may be appropriate: APRA's expectation is that boards adopt a proactive approach to challenging recommendations and exercising their discretion – ie APRA's expectation is that boards exercise their discretion 'in a timely manner, rather than acting only on the basis of realised outcomes'. For example, APRA suggests that it may be appropriate for boards to reduce variable remuneration during a period of stress rather than waiting for losses to be realised.
- APRA comments that it does not consider it would be prudent for boards to act 'only once risk issues are made public, to adopt management recommendations without challenge, or to excuse poor risk outcomes on the basis of good intent'.

Reporting: Boards should take proactive steps to guide management on their reporting needs d

- APRA expects that the board and the RemCo will take proactive steps to guide management on the information they need to fulfil their role.
- APRA suggests that good practice would be for management to provide the RemCo with 'formal documented performance and risk assessments for individuals in specified roles and summaries for cohorts' including 'clear qualitative and quantitative assessments for measures that have formed the basis of decisions, including key metrics and an outline of how assessments have flowed through to remuneration outcomes'.

- APRA further suggests that good practice for cohorts would be 'to assess, on an aggregated basis, similar information to that which is reviewed for individual remuneration decisions'. It's also suggested that entities should consider whether additional information (eg trends and outliers, summary indicators that show distributions, averages or medians) could be helpful.

Guidance on maintaining a remuneration framework consistent with the requirements in CPS 511

Draft CPS 511 (once finalised) will require an entity to maintain a remuneration framework that sets out the key policies and processes needed to meet CPS 511 requirements. Figure 1 at p10 of the draft guidance is a graphic showing the key components of a typical remuneration framework.

Remuneration policy and design

- Draft CPS 511(once finalised) will required entities to have in place a remuneration policy covering all employees (including those retained under contract or employed by a related party).
- APRA's expectation is that entities take 'reasonable steps' – the guidance suggests that reasonable steps may entail the use of induction and/or periodic training, guidance on performance assessments and 'easily accessible and understandable policies - to ensure that every employee understands the link between their performance and their variable remuneration, including that their variable pay may be reduced for adverse conduct or risk outcomes.

Group remuneration policies

- Where an entity is part of a wider corporate group, a group remuneration policy may be used, provided that it meets the requirements of CPS 511 and has been approved by the board or relevant oversight function.
- APRA considers that it is good practice for entities to assess how the policy 'complies with the requirements in CPS 511, is appropriate for its specific business activities and risk profile, and meets the spirit and intent of the standard'.

Specified roles

APRA expects the remuneration policy would record the particular 'specified roles' for the entity (ie executive directors, senior managers, material risk-takers and all risk and financial control personnel), and summarise the remuneration arrangements for these roles.

Material risk takers

- Draft CPS 511 (once finalised) will require that the board approve variable remuneration outcomes of all material risk-takers on a cohort basis. The draft guidance suggests that 'good practice' would include developing, disclosing and regularly reviewing a 'threshold definition for material risk-takers, including quantitative indicators and qualitative criteria for the identification of such roles'. APRA suggests that quantitative indicators could include: impact on regulatory capital, while qualitative criteria might include the impact on the entity's reputation, customers and prudential standing.
- APRA further suggests that as a matter of prudent practice, entities should also consider identifying groups of material risk takers within the organisation as well as individuals 'including those that may collectively affect financial soundness' eg financial market traders and material insurance underwriters.
- For highly paid material risk takers within SFIs (who are subject to minimum deferral requirements) – ie material risk-takers with total remuneration greater than $1 million in a financial year, including variable remuneration that has been awarded – APRA suggests that it would be good practice for entities to also 'monitor and include material risk takers with remuneration close to the $1 million level'.

Risk and financial control personnel

- The draft guidance suggests that prudent boards should monitor the remuneration of all risk and financial control personnel as a cohort, to ensure remuneration arrangements are 'adequate to attract and retain suitably qualified, skilled and experienced staff'.
- Generally, APRA observes that risk/control personnel would 'typically receive a higher proportion of fixed remuneration than other staff'.
- APRA's expectation is that the determination of variable remuneration for this cohort should not be carried out by managers of the business areas they monitor in order to avoid potential conflicts of interest. APRA further expects that individual performance measures for this cohort would be 'principally' based on non-financial measures.

Service providers: guidance around managing and addressing potential conflicts

- Once finalised, draft CPS 511 will required entities to identify and address conflicts between the remuneration arrangements of third-party service providers (eg external investment managers, mortgage brokers and insurance brokers) and the intent of their remuneration framework.
- The draft guidance suggests that this will require entities to take 'reasonable steps' – eg applying a materiality threshold or definition approved by the board - to identify when the remuneration arrangements of a service provider could present/are likely to represent a conflict/risk.
- If a potential conflict is identified entities are required to take steps to address it. The draft guidance suggests that this could include, depending on the materiality of the conflict: a) 'enhanced oversight'; b) amending the service contract; or c) terminating the arrangement.
- In particular, the guidance makes clear that entities are expected to subject providers that sell/distribute products on their behalf (eg brokers) to 'heightened scrutiny' and take steps to ensure appropriate controls are implemented (where appropriate).
- APRA considers that as a matter of good practice, entities should document the assessment of the potential conflicts and monitor the effectiveness of any measures implemented to manage the risks.

Remuneration design

- The new standard, once finalised, will require entities to align their remuneration arrangements with performance and risk, and to incorporate risk management (including effective management of both financial and non-financial risks) into the design of variable remuneration arrangements.
- Draft CPG 511 suggests that this will mean that 'prudent' entities should consider the balance between fixed vs variable remuneration to ensure there are appropriate incentives for performance and risk management.
- Draft CPG 511 suggests that the form of variable remuneration offered will be important in this context. For example, APRA observes that offering a higher proportion of equity based variable remuneration (as opposed to cash) could support more prudent long term decision making.
- Table 2 at p13 of the guidance lists common forms of variable remuneration, including five 'more complex' arrangements that APRA expects would either be 'avoided or tightly controlled'. These are:
  1. 'Lending and leveraged arrangements, such as shares funded by a concessionally priced loan, which can be highly sensitive to movements in share prices'
  2. 'Equity options, which can generate highly geared incentives on the upside and limited downside'
  3. 'Guaranteed cash payments, which are not performance related, or upfront payments, which are not deferred'
  4. 'Fringe benefits, where these comprise a significant proportion of remuneration or are not subject to rigorous oversight'
  5. 'Hedging arrangements for equity-based remuneration, which are prohibited under CPS 511 as they undermine the purpose of deferral.'

Non-financial performance measures

- APRA defines financial and non-financial measures as follows:
  - financial measures are measures based on 'revenue, sales, profit, the entity's share price, total shareholder return, return on equity, and other measures that directly affect these'
  - non-financial measures are measures that 'support the broader objectives of the remuneration framework, including risk management'. Table 3 at p15 gives a number of 'illustrative' examples of non-financial measures.
- Once finalised, draft CPS 511 will require SFIs to give 'material weight' to non-financial performance measures (Table 3 at p15 gives a number of 'illustrative' examples of non-financial measures) in the determination of each component of a person's variable remuneration.
- APRA also expects that non-SFIs would also give careful consideration to incorporating non-financial metrics into their variable remuneration arrangements.

Selection of non-financial metrics

- Neither the draft guidance nor the draft standard specify which non-financial metrics should be used. Rather, APRA expects each entity to 'define non-financial measures that best suit their particular strategy and risk objectives, and reflect their specific risk profile'. APRA also expects that entities will be able to demonstrate how the non-financial measures selected supports their desired risk culture and promotes the prudent management of key risks'.

- Draft CPG 511 cautions entities against using too many measures or failing to define them clearly.
- APRA comments that when 'viewed in aggregate across the entity' the non-financial measures included in variable remuneration arrangements should 'comprehensively reflect the entity's risk profile without gaps in key areas'. That is, APRA's expectation is that 'all material risk categories' as set out in the relevant prudential standards (CPS 220 and SPS 220) would be considered, to ensure there is full coverage of the risks for the entity as a whole.
- When determining appropriate non-financial metrics for individuals, APRA expects that the measures selected will be targeted on the key risks the individual is responsible for/able to influence and reflect their 'span of control either individually or as a contributor to a particular team'. APRA comments that 'group wide or division wide measures can help drive collective accountability, but only where the individual has a reasonable degree of control and influence on the outcome. For example, APRA suggests that though customer satisfaction measures might be appropriate for individuals involved in the sale/distribution of products, the inclusion of the same measure may not be relevant for risk-personnel.

Incorporating non-financial measures

- Draft CPG 511 suggests that good practice, in terms of incorporating non-financial performance measures into the design of variable remuneration arrangements would ensure that:
  - 'the impact of non-financial measures on individual variable remuneration can be easily understood, particularly in complex methodologies'
  - 'remuneration outcomes are sensitive to the assessment of non-financial measures, as there is otherwise limited scope to impact behaviours'
  - 'non-financial measures can impact each and all components of variable remuneration, including any long-term and short-term incentive plans'
  - 'the impact of non-financial measures is not merely considered in cases of significant events, such as misconduct or adverse risk outcomes'.
- APRA comments that certain types of remuneration models - for example discretionary profit share plans and service based awards - could make it more 'challenging' to meet these expectations. On this point, APRA comments that the use of 'gateways, modifiers and other remuneration adjustment tools can be effective, but would be unlikely to meet the expectations above if used only in cases of significant adverse risk and conduct outcomes'.

Determining 'material weight'

- APRA states that the 'purpose of applying a material weight to non-financial measures is to promote a balanced approach to incentives, encourage the prudent management of risk, and limit financial performance measures so that they are not the only or predominate driver of remuneration outcomes'. Accordingly, draft CPG 511 states that the 'level of weighting applied to non-financial measures' should 'reflect the level of importance the entity places on managing its risk profile and supporting broader objectives beyond financial performance'.
- Draft CPG 511 suggests that it would be prudent for boards to 'clearly define a minimum level or range for the weighting and impact of non-financial measures in variable remuneration' and that it would be good practice for this to be reviewed on an annual basis to ensure that it is 'driving expected behaviours'.
- CPG 511 makes clear that the material weighting given to non-financial metrics may vary depending on the role and may also change depending on the particular circumstances (for example – it could apply to a broader range of roles during some periods such as where entities are rebuilding financial resilience or implementing a remediation program).
- In assessing whether material weight is being applied effectively in the design and determination of variable remuneration outcomes, CPG 511 suggests that boards could consider whether the weighting:
  - 'is a sufficient incentive to influence an individual’s behaviour, priorities and decisions'
  - 'is robust and cannot be overshadowed or diminished by performance or outperformance on financial measures'
  - 'is applied to measures over which the individual has a reasonable degree of control and influence'
  - 'is applied to measures that effectively support the objectives of the remuneration framework, including risk management'
  - 'has been demonstrated to work in practice to incentivise prudent outcomes over time, where this is possible to determine'.

Entities may opt not to offer variable remuneration

Draft CPG 511 also observes that entities may decide not to offer variable remuneration 'if this does not support their objectives or business model'.

Risk and conduct adjustments

- APRA's expectation is that all entities will build into relevant employment contracts, 'appropriate in-period adjustments, malus and clawback arrangements, to ensure that there are consequences for serious risk issues or misconduct, including those that may emerge several years after the event'.
- APRA observes that where a 'downward risk-adjustment to variable remuneration has been applied, it would be inconsistent with prudent practice to make offsetting increases in remuneration such as higher fixed pay or non-salary benefits'.

Downward adjustments should be made on a 'timely basis'

- Under CPS 511 (once finalised) entities will need to have in place a clearly defined process for making downward adjustments to variable remuneration, as well as for the application of malus and clawback. This process will need to include specifying 'predetermined triggers' for a downward adjustment to be considered.
- Draft CPG 511 suggests that scenarios or examples could be helpful in determining what triggers will be appropriate. It's suggested that 'good practice' would be to for entities to consider 'known incidents, findings from audits and regulatory reviews, product failures, trends in conduct or risk incidents'. For example, APRA suggests that a breach of a prudential standard or other regulation would typically be expected to result in a risk adjustment for an individual or group.
- Draft CPG 511 makes clear that APRA expects consideration of in-period risk adjustments to be made 'on a timely basis' ie in the context of regular performance assessment, but also in response to information about misconduct or adverse risk outcomes outside of the regular performance cycle.
- APRA comments that in some instances it may take time for the full impact of issues to emerge. In these circumstances, APRA's expectation is that entities take 'timely action' by making an initial adjustment and then make a final adjustment once the full impact of an incident is known. APRA comments that 'where an individual is under internal or external investigation, besting or other payment of variable remuneration would typically be suspended until the conclusion of the investigation'.
- Draft CPG 511 suggests that where the variable pay of employees at lower levels of an organisation are applied, entities could consider whether a corresponding adjustment at executive level is appropriate to recognise 'overall line or functional responsibility'.

Assessing severity – developing and applying a 'severity scale'

- APRA expects entities to apply appropriate consequences in the form of in-period risk adjustments, malus or clawback based on the severity of the adverse risk or conduct outcome in each particular case. For example, APRA suggests that clawback is only likely to be considered where in-period downward adjustments and malus do not provide 'a sufficient consequence'.
- APRA suggests that in gauging the severity of a case, entities should consider a range of factors including the actual/expected reputational impact for the organisation, the impact on customers or beneficiaries and/or impact on the prudential standing of the organisation.
- APRA suggests that good practice would be to develop a 'severity scale' with example cases and any precedents, to help guide board decision making on determining the level of severity and the remuneration impacts that would be expected to result. Use of a severity scale would also, APRA comments, support consistency in approach across different cases.

Adjustment decisions should be documented

- Draft CPG 511 suggests that it is good practice for all adjustment decisions to be recorded. Importantly, this includes where an adjustment was considered but not implemented.
- APRA observes that 'the development of a comprehensive library of past risk adjustments can also be useful, both to readily recall prior decisions and for consistency. This is particularly relevant for borderline decisions'.

Deferral

- Draft CPS 511 sets out minimum deferral periods for variable remuneration for specified roles at SFIs. The draft guidance comments that it is open to SFIs to consider longer deferral periods and deferral for other roles
- APRA considers that good practice is to apply deferral to each material component of an individual's variable remuneration including to any one-off payments eg sign-on awards and buy-outs.
- APRA also suggests that non-SFIs could also 'consider and apply deferral arrangements, to align variable remuneration outcomes with risk time horizons'.

Review of the remuneration Framework

SFIs will be required under CPS 511 (once finalised) to conduct an annual compliance review and a triennial effectiveness review of the remuneration framework. APRA also suggests that 'prudent' non-SFIs would also consider conducting periodic reviews (as appropriate).

Annual reviews

Draft CPG 511 suggests that an SFI's annual review would:

- 'typically include' a self-assessment against CPS 511 requirements and include assessment of both the design and outcomes of the remuneration framework
- be conducted by staff with appropriate skills and experience, and who are not involved in reporting to those involved in the design of the remuneration framework
- be subject to appropriate independent challenge.

Triennial reviews

- Draft CPG 511 suggests that an SFI's triennial effectiveness review would 'typically provide a deeper and broader assessment of the remuneration framework, including comparison to better practice' and recommendations for improvement (where needed). For example, APRA suggests that recommended improvements could arise from consideration of (among other things): the general findings from regulatory reviews of risk management; specific findings from any internal/external or regulatory reviews; changes in the strategy, risk profile or risk management objectives of the organisation; and/or the degree to which remuneration outcomes have been consistent with the objective of the remuneration framework.
- Draft CPG 511 states that the scope of the review should include: the role of the board, the design of remuneration arrangements and the effectiveness of risk and conduct adjustments.
- Draft CPS 511(once finalised) will require the triennial review to be conducted by 'operationally independent, appropriately experienced and competent persons'. Draft CPG 511 states that:
  - Where internal staff conduct the triennial review, 'a prudent Board would gain assurance that they are operationally independent and are able to provide an objective review, with the requisite skills, experience and expertise'.
  - APRA suggests that entities could consider the use of external expertise to meet this requirement.

New reporting and disclosure requirements

- APRA is currently conducting a data study with selected entities, to inform its approach to reporting and disclosure requirements ahead of conducting a consultation with industry in 'late 2021'.
- In a letter to industry, APRA encouraged entities to consider 'how they will publicly demonstrate that they meet CPS 511 requirements, with clear, comprehensive and timely disclosures' in the lead up to the implementation of the new standard. APRA suggests that this could include 'regular disclosure' around: the remuneration and governance and oversight processes in place; remuneration design (and the rationale behind it); remuneration outcomes for certain roles; and any 'consequence management' applied (including the rationale for the downward adjustments to remuneration).

[Source: Draft Prudential Practice Guide CPG 511 Remuneration; Letter to industry; APRA media release 30/04/2021]

Disclosure and Reporting

ASIC instrument confirms the extension of reporting deadlines

On 23 April 2021, the Australian Securities and Investments Commission (ASIC) announced its intention to extend deadlines for 30 June 2021 financial reports.

ASIC Corporations (Amendment) Instrument 2021/315 gives effect to this announcement by extending the deadline for both listed and unlisted entities to lodge financial reports (under Chapters 2M and 7 of the Corporations Act 2001) by one month for balance dates from 23 June to 7 July 2021 (inclusive).

According to the explanatory statement,

> 'The extended reporting deadlines for reporting periods ending 23 June 2021 to 7 July 2021 will assist with any pressures on resources for the audits of smaller entities and provide adequate time for the completion of the audit process taking into account challenges presented by COVID-19 conditions. Factors that might affect audit firm resources could include restrictions on travel into Australia and increased staff turnover'.
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> [Source: ASIC Corporations (Amendment) Instrument 2021/315]

Meetings and Proxy Advisers

Top Story | Tighter rules for proxy advisers? The government is seeking views on potential changes

Key Takeouts

- The government is seeking feedback on potential changes to the way in which proxy advisers who provide proxy services to institutional investors are regulated. Among other things, options being considered include the introduction of new licensing requirements for proxy advisers and the introduction of a new requirement for proxy advisers to provide their research/voting recommendations to the company to allow time for the company to respond, before supplying it to their clients.
- In addition, the government is seeking feedback on potential changes to disclosure requirements for superannuation funds who use proxy advice services. In particular, the consultation seeks views on whether funds should be required to publicly disclose more detailed information on their voting record, including whether their vote was consistent with any proxy advice received as well as views on whether funds should be required to disclose how they exercised their independent judgement in determining how to exercise their vote.
- The closing date for submissions to the consultation is 1 June 2021.

The government has released a brief consultation paper, seeking feedback on a five proposals/options that if implemented, would both: a) tighten the current regulatory regime for proxy advisers in the context of providing proxy services to institutional investors; and b) increase transparency around how superannuation funds exercise their voting rights.

According to the consultation paper, the purpose of the consultation is to both to assess the adequacy of the current regulatory regime and to seek feedback on potential reform options aimed at strengthening the transparency and accountability of proxy advice.

Announcing the consultation, the government emphasised the need for greater transparency.

> 'Collectively, superannuation funds own around 20% of the Australian Stock Exchange (ASX), worth around $440 billion, and the market for proxy advice in Australia is dominated by just four firms. It is important therefore that proxy advice is transparent and its quality and accuracy can be relied upon by investors and companies that are the subject of their reports. There is currently very limited regulation on how this proxy advice is formulated, provided, used and disclosed. Given the influence of proxy advisers on the conduct of businesses listed on the ASX, Treasury will consult on measures to help facilitate greater transparency of proxy advice'.

The consultation follows recent reforms in the United Kingdom and United States to strengthen the oversight of proxy advice.

Summary of proposed options

New disclosure requirements

The paper includes two proposed changes aimed at increasing transparency around how superannuation funds exercise their voting rights, and the role of proxy advisers in this context.

Under option 1, superannuation funds would be required to disclose more detailed information around their voting decisions including: a) whether they received advice from a proxy adviser and if so which adviser; b) how they voted; and c) whether their decision was consistent with the proxy advice.

Under option 2, proxy advisers would be required to be 'meaningfully independent from a superannuation fund they are advising to ensure that proxy advice is provided to and used by superannuation funds on an "arm’s length" basis'. Trustees would also be required to publicly disclose how they 'implement their existing trustee obligations and duties around independent judgement in the determination of voting positions'.

The consultation paper seeks feedback on:

- what impact the proposed options would have on both superannuation fund members and superannuation funds (from a regulatory compliance perspective)
- 'what level of independence between a superannuation fund and a proxy adviser should be required' and to which entity (the fund or the proxy adviser) the new requirement should apply
- the appropriate timing of reporting and in particular, whether trustees should be required to provide their proxy voting policy to members ahead of an annual members' meeting
- whether there is other information on how voting decisions are informed by proxy advice that should be disclosed by superannuation funds

A new requirement for proxy advisers to provide their reports/recommendations to companies first

Option 3 proposes to introduce a new requirement for proxy advisers to provide their report (ie the report containing their research and voting recommendations for resolutions at a company's meeting) to the relevant company five days before providing it to investors/making it publicly available.

The consultation paper suggests that this timeframe would enable sufficient time for both the company and the proxy adviser to comment, and for the proxy adviser to 'amend the report in response if warranted'.

Feedback is sought on both: a) what length of time would be appropriate to enable companies opportunity to respond to the proxy report and for the report to be amended to correct any errors; and b) whether there are any 'requirements' (eg confidentiality requirements) that should be placed on companies or advisers during this period.

A new requirement for proxy advisers to inform clients how they access the company's response

Option 4 in the paper proposes to introduce a new requirement for proxy advisers to notify their clients of how they can access the company's response to the report. The consultation paper suggests that this could be through providing a website link/instructions on how to access the response. Feedback is sought on what method proxy advisers should be required to use to inform clients.

The consultation paper also seeks stakeholder views on a how options 3 and 4 would: a) impact engagement between proxy advisers and companies; and b) whether the changes would increase the likelihood of investors being aware of the company's position on proxy reports/advice.

New AFSL requirement for proxy advisers

Currently, proxy advisers provide advice on a range of matters, much of which does not require an Australian Financial services Licence (AFSL). Option 5 proposes to introduce a new requirement for proxy advisers to obtain an AFSL in order to provide proxy advice/recommendations to institutional investors.

According to the consultation paper, the purpose of requiring proxy advisers to hold an AFSL is to ensure that they are 'making assessments on issues that have a material impact on the conduct of business in Australia with appropriate regulatory oversight and the necessary care and skill required'.

Feedback is sought on whether the AFSL regime is an appropriate licensing regime through which to regulate the provision of proxy advice and whether coverage under the AFSL regime would result on an improvement in the standard of proxy advice.

Next steps

The closing date for submissions is 1 June 2021.

At this stage, the government has not specified any proposed timeframe for the implementation of the options set out in the consultation paper.

Initial response

In a statement, Business Council of Australia (BCA) President Tim Reed welcomed moves to increase transparency around voting decisions and how they are reached, and in particular the proposal to enable companies to access/respond to proxy reports/recommendations. Mr Reed said,

> 'The decisions made by proxy advisors have big implications on how businesses run and their ability to make returns for shareholders, so of course the system should be as transparent as possible. Proxy advisers have a role in ensuring businesses are accountable to shareholders, but advisers must also be subject to appropriate levels of accountability given the significant influence that they now wield. When proxy advisors

provide advice, companies should have chance to respond and all the facts should be on the table about how decisions that impact people's lives are made. We look forward to contributing to this review and working with the government to deliver a system that gives shareholders the transparency and accountability they need to trust the system.'

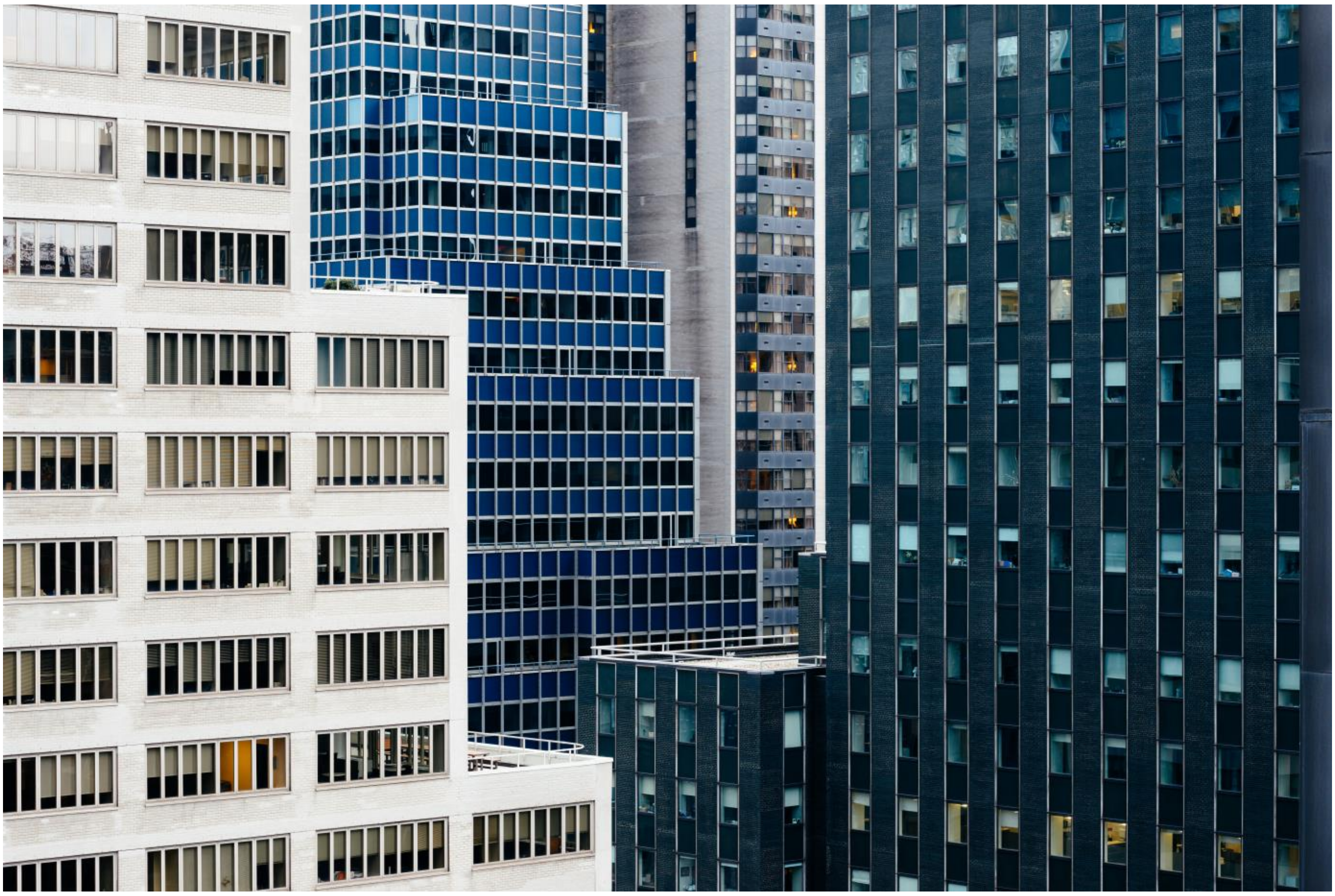
The Australian Institute of Company Directors has also welcomed the consultation. A ICD CEO and Managing Director, Angus Armour commented,

'The AICD has long supported more robust regulation of proxy advisers. The current lack of minimum standards means a key market actor is largely unregulated. Given the important role of proxy advisers, it is vital that their advice is subject to appropriate safeguards to ensure it is fair and accurate. The AICD welcomes this move by the Government to consult on measures to help facilitate greater transparency.

Likewise, the AFR reports that some prominent directors are supportive of the proposed changes.

However, according to media reports (The AFR, The AFR, The Guardian, Financial Standard) proxy advisers and some commentators have questioned the need for, and raised concerns about, the impacts of the proposed changes.

[Sources: Treasury media release 30/05/2021; Consultation Paper; BCA media release 01/05/2021; Joint media release: Treasurer Josh Frydenberg and Minister for Financial Services, Superannuation and the Digital Economy Jane Hume 30/04/2021; AICD media release 04/05/2021]



Shareholder Activism

As you Sow racial justice campaign: 38.9% of shareholders at Abbott Labs vote in support of resolution

Context

- In the wake of the events of 2020, and the public statements made by a number of companies on the need to address racial inequality/injustice, As You Sow launched an initiative pushing for greater transparency around the actions companies are taking on the issue.
- As part of this initiative As You Sow produced the Racial Justice Scorecard which ranks companies on their efforts.
- As You Sow also filed resolutions at a number of companies (you can find a list of the companies targeted here) requesting that they report on their plans (if any) to promote racial justice. As You Sow suggests that the reports should include both: a) 'potential policies the company could adopt to promote racial justice in tis corporate workplaces and operations'; and b) detailed statistical information about the gender, race and ethnicity of new hires and the existing workforce.

38.9% of Abbots Labs shareholder have voted in support of the resolution

According to As You Sow, so far in 2021:

- The resolution at Abbott Labs went to vote, and received 38.9% support. Commenting on this, As You Sow representative Olivia Knight said that Abott's continued refusal to disclose the information is 'deeply troubling', especially in light of the public statements the company has made in support for racial justice and community outreach programs. Ms Knight went on to comment that 'Abbott's inaction will only be met with increased demands for corporate change…It is time for Abbott to release statistical data, to prove they are allies in the fight to end systemic racism in corporate America.'
- The resolutions at both Monster Beverage and Foot Locker were withdrawn after agreement was reached with the companies.
- Charles Schwab was successful in its application to SEC to exclude the resolution.

[Sources: As You Sow media release 23/04/2021; As You Sow Racial Justice Resolutions; Racial Justice Scorecard]

Engine No 1's campaign pushing for climate action at Exxon Mobil continues to gain investor support

- CalPERS, CalSTRS and the New York State Common have indicated their support for activist Engine No 1's four independent board candidates ahead of the AGM. The move has been welcomed by Engine No 1. You can access our previous update on the campaign in at p13 of Governance News 3 March 2021.
- Separately, Professor Robert Eccles has released his analysis of Engine No. 1's Investor Presentation and ExxonMobil's response. Ultimately, Professor Eccles considers shareholders should support all four of Engine No 1's candidates to shift the strategic direction of the company.

[Sources: Engine No 1 media release 27/04/2021; Forbes 29/04/2021]

CA 100+ Benchmark Initiative: 98% of General Electric shareholders back shareholder net zero disclosure resolution

According to As You Sow, 98% of General Electric (GE) shareholders have voted in support of a shareholder resolution (coordinated by As You Sow) calling on the company to report on 'if and how' it plans to reach net-zero greenhouse gas emissions (GHG) and help limit global warming to 1.5 degrees as recommended by the Paris Climate Agreement.

More specifically, the resolution calls on the company to disclose how it will comply with 'Indicator 1' of the Climate Action 100+ Net Zero Benchmark. Indicator 1 requires that companies disclose whether they have set an ambition to achieve net zero GHG emissions by 2050 or sooner and 'whether any such emissions ambition statement explicitly includes scope 1, 2, and, when applicable, the most relevant scope 3 emissions (Net Zero Indicator).'

According to As You Sow, though GE has committed to achieve carbon neutrality for its facilities and operations by 2030 (Scope 1 and 2), it has so far not reported an ambition to reduce its scope 3 emissions. On this basis, the resolution calls on GE to report on 'if and how' it has met the criteria of the Net Zero Indicator, or whether it intends to revise its policies to be fully responsive to the Indicator.

The full text of the resolution is here.

Unusually, As You Sow notes that the resolution had the support of the GE board.

As you Sow also flags that 57.7% of shareholders voted against GE's executive compensation plan.

Broader campaign

For context, the shareholder climate resolution is one of four resolutions targeting disclosure by Climate Action 100+ focus companies (coordinated by As You Sow and Rights Colab), seeking specific climate-related disclosure following the release of the Climate Action 100+ Net Zero Company Benchmark. Resolutions were also filed at General Motors, Caterpillar, and the refiner Valero Energy.

A fifth resolution, filed at Twitter, calls on the Twitter board for broad disclosure compliant with the Benchmark. You can find more background information about As You Sow's campaign here.

[Sources: As You Sow media release 04/05/2021; Full text of the resolution; Background on the resolution: Proxy Preview blog 16/03/2021]

Voting against directors: Three state Treasurers have voted against directors at Duke Energy in climate protest

Majority Action has announced that as part of the Proxy Voting for .5°C World initiative, three state Treasurers - Illinois State Treasurer Michael Frerichs, Connecticut State Treasurer Shawn Wooden, and Vermont State Treasurer Beth Pearce – have voted against two directors (the Lead Independent Director and Chair and CEO) at Duke Energy in advance of the company's AGM on 6 May 2021. The reasons for their 'against' votes was to register their concern over what they see as the company's failure to align its capital expenditures with its zero carbon emissions by 2050 goal.

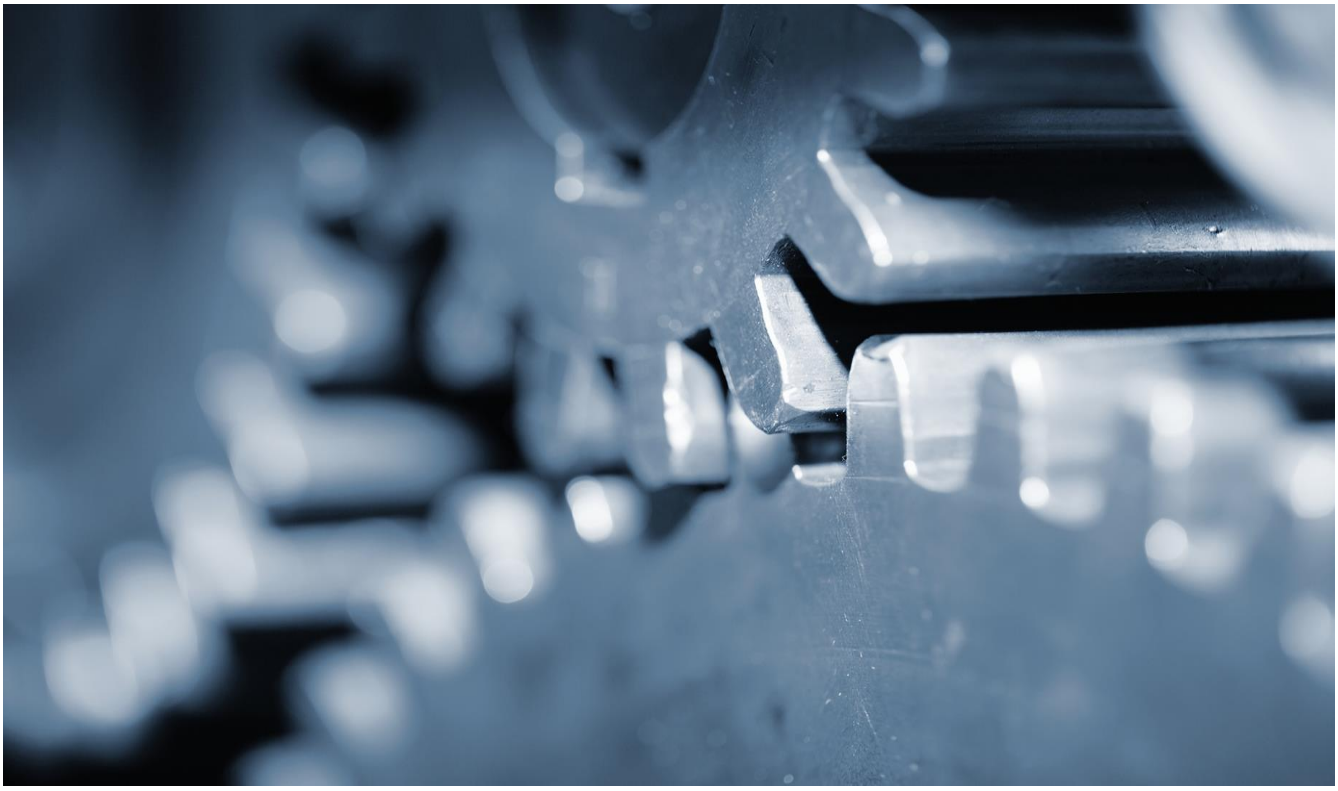
According to the statement from Majority Action, the Treasurers are concerned about the impact of the company's failure to appropriately manage material ESG risks on investors. For example, they consider that this led to a $1.6 billion write-down in 2020 associated with the Atlantic Coast Pipeline project. The project failed to proceed after a successful campaign by Indigenous and Black communities.

[Source: Majority Action media release 03/05/2021]

In Brief | Over 140 of the US' racial justice leaders and their allies have called on the largest asset managers to uphold their 2020 statements in support of racial equity in an open letter. Among other things, the letter calls on asset managers to support shareholder proposals calling for racial equity audits; transparency and accountability on political spending and lobbying and action to address workplace discrimination

[Source: Majority Action SEIU media release 20/04/2021]

Other Shareholder News



The government has announced new appointments and additional funding for the Takeovers Panel and flagged plans to consult on potentially expanding its remit

The government has announced new appointments and additional funding for the Takeovers Panel and flagged plans to consult on potentially expanding its remit

Treasurer Josh Frydenberg has announced that:

- The government has reappointed 15 part time members to the Takeovers Panel, and appointed two new members Marina Kelman and Sandy Mak to the panel for the first time. Each member has been appointed for a three year term commencing 30 April 2021.
- The panel will receive an additional $3.4 million in additional funding in the 2021-22 Budget. The Treasurer said that the additional funding reflects the 'significant growth in takeover disputes'.
- A public consultation will be held on potentially broadening the role of the Panel in control transactions, including giving advance rulings and expanding the Panel's remit to include members' schemes of arrangement

The Treasurer commented that the appointments and additional funding will ensure the panel 'continues to fulfil its critical role in providing market participants with efficient and cost-effective access to dispute resolution.'

[Source: Treasurer Josh Frydenberg media release 30/04/2021]

In Brief | The board of Premier Investments has confirmed that it will refund some JobKeeper payments ($15.6 million) to the ATO (instead of holding it in reserve against any future snap COVID-19 lockdowns) in light of both the strong trading conditions and the success of the government's management of the pandemic

[Source: Premier Investments media release 03/05/2021]

Regulators

ASIC Leadership changes and new Statement of Expectations announced

Appointments of new Chair and Deputy Chair

Joseph Longo has been appointed as the new ASIC Chair and Sarah Court has been appointed as an additional Deputy ASIC Chair for a five year period, commencing on 1 June 2021.

Mr Longo served as the National Director of Enforcement at ASIC from 1996-2000. Ms Court is currently Deputy Chair of the Australian Competition and Consumer Commission (ACCC).

New statement of expectations

The Treasurer also announced that the government will issue ASIC with a new Statement of Expectations (following the commencement of the new Chair and Deputy Chair in their new roles).

The Treasurer said that the new Statement of Expectations will, 'make clear that the Government expects the commission, as a whole, to operate as a strategic board and that all operational matters are the responsibility of the chair, who is the accountable authority. The statement will also make clear that the Government expects ASIC to support Australia's economic recovery from the COVID pandemic'.

[Sources: ASIC media release 29/04/2021; ACCC media release 29/04/2021; Treasurer Josh Frydenberg media release 29/04/2021]

Hayne implementation – recommendation 6.14: Plans announced to introduce legislation to establish the Financial Regulator Assessment Authority

Context

- Financial Services Royal Commission 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 the government released two draft Bills — Financial Regulator Assessment Authority Bill 2020 (Assessment Authority Bill) and Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2020 Measures)) Bill 2020: FSRC rec 6.14 (Financial Regulator Assessment Authority) (Stronger Regulators Bill) — for consultation, proposing to implement the government's response to this recommendation. Consultation closed on 28 February 2020 (you can find a brief overview of the proposed reforms in Governance News 5 February 2020 at p11)

Legislation to be introduced mid-2021

- The Treasurer has announced that the government will introduce legislation 'by the middle of the year' to establish the Financial Regulator Assessment Authority (FRAA) – an 'external framework for assessing the effectiveness and capability' of the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC).
- According to the statement, the FRAA will consist of three independent statutory appointees together with the Treasury Secretary.
- Reviews will be conducted once every two years and as directed by the Treasurer.

ASIC Capability Review to be conducted first

According to the government's statement, the FRAA will be tasked undertaking a capability review of ASIC within its first year of operation. The Treasurer said that this is intended to assist the incoming Chair – Joseph Longo, who will take up his position on 1 June 2021 – to ensure that the regulator is operating effectively and consistently with the government's Statement of Expectations. A revised Statement of Expectations will be issued to ASIC after Mr Longo commences in the role.

[Source: Treasurer Josh Frydenberg media release 29/04/2021]

Financial Services

Top Story | MinterEllison Foreign Bank Tracker

The sixth edition of MinterEllison's Foreign Bank Tracker has been released. The report analyses capital flow trends into Australia via foreign banks. The trend is positive with many offshore banks making plans to step up their growth plans for the Australian market. For example the report identified that:

- While growth of foreign bank activity in Australia was slower in 2020 than in previous years, foreign banks continued to increase their presence.
- North American banks grew resident Australian assets by 26% - their highest rate of growth since 2007. Asian banks grew by 12% and European banks by 7%.
- Two new banks– both European – opened in Australia: Transferwise (HQ UK) and Intesa Sanpaolo SPA (Italy).

The authors suggest that this reflects confidence in Australia as an attractive investment destination and safe harbour for investors.

The full text of the report is available here.

No recommendation to change the general advice label? ASIC says research confirms that changing the general advice label to something else won't help consumers more easily distinguish between personal and general advice

The Australian Securities and Investments Commission (ASIC) has announced that independent consumer research has concluded that re-labelling 'general advice' to enable consumers to more easily distinguish between 'personal advice' and 'general advice', is unlikely to have the desired effect.

Five key findings

The research found that:

- There was zero evidence that relabelling general advice would change consumers' understanding of general advice. In fact, the research found that many consumers tested did not notice the label used to describe the advice at all – 'the results showed no effect on consumers' understanding of general advice when a label was used compared to when no label was used'.
- None of the alternate labels to 'general advice' were found to be a 'significantly better fit with the description of general advice' ie there was no evidence that alternate labels enhanced consumers' understanding of the description of general advice..
- The circumstances in which general advice was received was found to 'significantly increase' the risk of misunderstanding the nature of the advice being given. For example, when there was some personal interaction – eg where advice was delivered one on one (over the phone) – consumers' perception that the advice was tailored to their personal circumstances increased. The research also found that most survey participants (8 in 10) felt it was important to seek further information regardless of what label was used.
- The research identified that other methods of clarifying what is meant by 'general advice' would be a more effective option. For example 'contrasting the descriptions of general and personal advice, and explicitly stating in the general advice warning that the provider of general advice is not required to act in the consumers' best interests' were more found to be more effective in helping consumers to understand the difference.

No recommendation to change the label

In light of these findings, ASIC states that it will not be making recommendations to the government in relation to changing the label of general advice.

Information for licensees

- ASIC recommends AFS licensees 'familiarise themselves with Regulatory Guide 244 Giving information, general advice and scaled advice', which provides on the differences between giving factual information, general advice and personal advice.
- ASIC also referred AFS licensees to the decision in Westpac Securities Administration Ltd & Anor v ASIC [2021] HCA 3 which: a) provides guidance on circumstances that may lead to a conclusion that personal advice was given instead of general advice; and b) clarifies that the general advice warning must be assessed in light of all the circumstances. This may mean that providing the warning once at the outset of the conversation may be insufficient to enable the recipient to understand that they are receiving general advice.

Quality of Advice Review

On 21 April 2020, the Minister for Superannuation, Financial Services and the Digital Economy, Jane Hume delivered a speech in which she announced that the government intends to conduct a Quality of Advice Review in 2022 to consider the full breadth of issues impacting on both quality and affordability of all forms of financial advice (you can find details at p19 of Governance News 28 April 2021)

ASIC has provided the findings from the consumer research to Treasury to assist with this broad review.

[Source: ASIC media release 04/05/2021]

The government has announced plans to improve the accessibility and affordability of home and business insurance for Northern Australian residents by establishing a $10 billion reinsurance pool

- The government has announced plans to establish a reinsurance pool, backed by a $10 billion government guarantee, to improve the affordability and accessibility of home and business insurance for Northern Australian residents.
- According to the statement, the government intends that the reinsurance pool will cover cyclone and flood damage in Northern Australia from 1 July 2022. More than 500,000 residential, strata and small business property insurance policies in Northern Australia are expected to be eligible to be covered by the reinsurance pool.
- This is expected to reduce insurance premiums across Northern Australia by over $1.5 billion for households, strata and small businesses over the next ten years.
- Work on developing the design of the reinsurance pool is being conducted by a Treasury led Taskforce, in close consultation with industry. The details are expected to be finalised following this consultation process.

[Note: The Australian Competition and Consumer Commission's December 2020 Northern Australia insurance inquiry final report recommended against the establishment of a government reinsurance pool to address affordability and/or availability concerns on the basis that this option would be unlikely to lower costs for consumers (among other things). Instead the report recommended subsidies to industry as a better option. The report states,

> 'We do not consider government reinsurance pools or government insurers are well-suited to address affordability concerns in a targeted way. Government reinsurance pools have generally been introduced overseas in situations where insurance or reinsurance was not available through the private markets, which is not the case in northern Australia. Private insurance markets continue to supply insurance, including for cyclone and flood risks, throughout northern Australia. Government insurers also cannot be justified on the basis of availability concerns. The potential for government insurers and reinsurance pools to lower premiums without the government subsidising the insurer in some way is uncertain, and any premium reductions may not be significant. These measures cannot be targeted to consumers most in need, and would transfer significant risks from insurers and reinsurers to governments.
>
> While subsidies would also require a call on public funds and may limit incentives to reduce risk, addressing acute affordability issues may lower future costs to governments of providing post-disaster relief to uninsured households and could help support governments' objectives of developing northern Australia'.

The full text of the report is here.]

Call for more detail

In a statement, the Shadow Treasurer, Shadow Assistant Treasurer and Shadow Minister for Financial Services criticised what they consider to be a lengthy delay in acting to address affordability and accessibility issues and called on the government to provide more detail, suggesting that:

> 'Any reinsurance pool must be accompanied by a plan for mitigation, incentives to discourage building in risky areas, and better building standards. Further efforts to retrofit older building stock must be part of any viable plan for Northern Australia'.

$40 million commitment to reduce insurance costs for strata properties

The government also announced $40 million in funding (starting in 2022) for the North Queensland Strata Title Resilience Pilot Program. The three year pilot program will subsidise the cost of cyclone risk mitigation works to improve insurance affordability and access for strata title properties in Queensland.

> [Source: Joint media release Joint media release: Prime Minister Scott Morrison, Minister for Agriculture, Drought and Emergency Management David Littleproud, Minister for Resources, Water and Northern Australian Keith Pitt; Assistant Treasurer Michael Sukkar 04/05/2021; Shadow Treasurer, Shadow Assistant Treasurer and Shadow Minister for Financial Services media release 04/05/2021]

CDR implementation: Access may be broadened, consultation on peer to peer lending and an opt-out data sharing model for joint accounts launched, certain other requirements deferred

Broader access being considered

Treasury has announced that it is developing plans to potentially broaden access to the consumer data right (CDR) ahead of conducting a formal consultation.

Proposed changes include:

- Enabling consumers to:
  - give 'trusted advisers' - ie accountants, lawyers, tax practitioners (including BAS agents), licensed financial advisers and planners, and residential mortgage brokers - access to their CDR data.
  - share certain 'insights' from CDR data for the purposes of verifying their identity, their account balance, income level and expenses. It's suggested that this could provider a quicker, easier and 'safer' means of confirming details in support of a loan assessment.
- Providing new pathways to accreditation:
  - It's also suggested that Accredited Data Recipients may be given the option to share CDR data with their 'agents' – ie with businesses who aren't accredited but who act on behalf of the Accredited Data Recipient as their authorised agent. In this case, the Accredited Data Recipient would bear liability for the acts of their agent.
  - It's also suggested that an Accredited Data Recipient would have the option to 'sponsor' other parties to become accredited.
- Potential benefits? Treasury suggests that the proposed changes will enable consumers to benefit from faster, more efficient and 'safer' sharing of data in a range of contexts. Treasury provides a number of examples in illustration. One example is that the changes would enable an individual or small business to consent to their accounting software platform (an Accredited Data Recipient) sharing their banking data with their accountant or BAS agent ('trusted adviser') to complete their tax return.
- Next steps: The Data Standards Body within Treasury will 'commence discussions' with the 'CDR community' on developing supporting standards prior to the release of the draft rules 'in the coming weeks'.

Consultation on a peer-to-peer model for the energy sector and an opt-out data sharing model for joint accounts

- To support the development of rules and standards to implement a peer-to-peer data access model for the energy sector, Treasury is consulting on design options. The full text of the consultation paper is here. The deadline for submissions is 26 May 2021.
- Treasury is also consulting on a proposal to support an 'opt out' approach for joint accounts for both the banking and energy sectors. Treasury states that the proposed change 'has the potential to reduce significant friction and

enhance consumer experience by aligning CDR data sharing consent requirements more closely with the existing permissions and consents between joint account holders in operating a joint account'. The full text of the consultation paper is here. The deadline for submissions is also 26 May 2021.

- Joint accounts requirements deferred: To support the approach outlined in the consultation paper, current requirements for banks to implement the joint account requirements that would have applied from November 2021 will be deferred, with new compliance dates to be set following consultation.
- Treasury has also deferred the November 2021 deadline for providing CDR data 'direct to consumers' to enable time for further consultation. This decision was made in response to stakeholder feedback.

According to Treasury, there will also be opportunities for stakeholders to provide feedback/participate in discussion on the changes through 'various CDR forums and engagement mechanisms' during May.

[Sources: Treasury media release 30/06/2021; Treasury media release 30/04/2021; Consultation Paper: A peer-to-peer data access model in the energy sector; Consultation Paper: An 'opt-out' data sharing model for joint accounts in the banking and energy sectors]

23 further recommendations to boost the fintech sector: Senate Committee's Second Interim Report released

Following the release of the first interim report in September 2020 (you can find our short summary here), the Senate Select Committee on Australia as a Technology and Financial Centre has released its second interim report.

The second interim report makes 23 recommendations that are intended to strengthen the regulatory environment for FinTechs and 'innovative businesses in Australia more broadly' by addressing issues in the areas of tax, regulation, access to capital, blockchain technology and technology skills.

Though the government is yet to formally respond to the first interim report, Committee Chair Andrew Bragg noted that a number of recommendations have nevertheless been adopted. Announcing the release of the second interim report, Mr Bragg expressed the hope that 'there is more scope for our latest bipartisan recommendations to be adopted'.

Tax

Recommendations 1-3 in the report recommend changes to current tax settings including the Research and Development Tax Incentive (R&DTI) and Australia's interest withholding tax regime.

- Recommendation 1 recommends that the 'Research & Development Tax Incentive be amended to allow for: a) different assessment methodologies to be used; and b) quarterly payments to successful applicants'.
- Recommendation 2 recommends that the government 'consider the establishment of a separate software-specific tax incentive scheme'.
- Recommendation 3 recommends that the 'government consider abolishing interest withholding tax.'

Regulation

Recommendations 4-6 in the report concern the roll out/implementation of the Consumer Data Right (CDR), including what additional safeguards may be needed in the event that a large non-bank digital platform were to apply for CDR accreditation.

- Recommendation 4 recommends that the 'government and relevant agencies pursue mechanisms to increase international participation in the Consumer Data Right (CDR) and interoperability with similar schemes in other jurisdictions, including by: driving the establishment of International Open Banking standards and broader standards relating to data sharing and consent management; and establishing mutual recognition arrangements for accreditation under the CDR and relevant schemes in other jurisdictions, in particular the United Kingdom'.
- Recommendation 5 recommends that the government, 'through Treasury and other relevant agencies, review and publicly report on what additional rules and safeguards may be required in the event that large nonbank digital platforms were to seek accreditation under the CDR regime'.
- Recommendation 6 recommends that the government 'develop consumer "nudge" mechanisms to be incorporated into the design of the CDR regime, to ensure consumers are periodically made aware of their ability to find better products and services through the CDR'.

Recommendations 7-9 concern the accessibility of data on big tech platforms and app marketplaces, the use of government registry data and the use of technology to streamline current processes ('rules as code' initiatives)

- Recommendation 7 recommends that pending any relevant findings of the ACCC, the government should 'consider whether an access regime for app marketplaces [ie Apple's App Store and the Google Play Store] may be necessary in order to ensure fair and equitable access for app developers'.
- Recommendation 8 recommends that the government 'review the ability for businesses to access relevant information from government registers (including ASIC registers and AEC electoral roll data) for the purposes of facilitating identity checks and offering Digital Identity services, particularly in comparison with how this access is facilitated in similar jurisdictions overseas'.
- Recommendation 9 recommends that the government 'establish a Commonwealth "Rules as Code" innovation hub, accompanied by a regulatory sandbox, to advance legal coding approaches to Commonwealth legislation and regulation'.

Access to capital

Recommendations 10-14 are aimed addressing issues around access to capital.

- Recommendation 10 recommends that the government 'provide for an Australian scheme based on US Rule 10b5-1 as an option for start-up companies. The government should enact integrity measures to avoid any gaming which may arise from trading plan modification'.
- Recommendation 11 recommends that the government 'amend existing legislation to require post-capital raising disclosure from listed companies'.
- Recommendation 12 recommends that the government 'should ensure that technology drives an equitable deal for retail shareholders by modernising the rights issuance system'.
- Recommendation 13 recommends that 'if the rights issues reforms contained in the recommendations above do not resolve the equity issues for retail shareholders, the government should conduct a review into retail shareholder participation in capital raisings'.

Blockchain and the regulation/use of digital assets

Recommendations 14-18 are focused on accelerating the development and potential utilisation of blockchain technology, for example the report recommends that a pilot blockchain land registry initiative be considered. The report also recommends increased transparency around key blockchain projects.

- Recommendation 14 recommends that the 'Council of Financial Regulators Cyber Working Group ensure its work takes into account existing and emerging international data standards with respect to blockchain and smart contracts. To this end, the Working Group should maintain open channels of communication with Standards Australia'.
- Recommendation 15 recommends that the 'Department of Industry, Science, Energy and Resources (DISER) regularly publish information about the National Blockchain Roadmap's implementation and the evaluation of that implementation'.
- Recommendation 16 recommends that, DISER 'act flexibly and responsibly with regards to reviewing, amending and updating the National Blockchain Roadmap as appropriate' in light of the rapid pace at which the technology is evolving.
- Recommendation 17 recommends that 'National Cabinet consider supporting a blockchain land registry initiative as a pilot project for Commonwealth State cooperation on RegTech'.
- Recommendation 18 committee recommends that the government 'consider how best to improve clarity with respect to the standing of smart contracts under Australian law as a matter of priority'.

Expert Skills

The remaining recommendations (recommendations 19-23) directly concern issues around attracting people with the necessary technology expertise to Australia, and retaining those skills.

- Recommendation 19 recommends that the government' review the global talent visa program and Hong Kong visa arrangements to ensure international competitiveness, including consideration of salary caps, age thresholds, turnover requirements and key criteria'.

- Recommendation 20 recommends that the government 'when undertaking the review of the global talent visa program, consider providing clearer policies and guidelines on the identified target sectors'.
- Recommendation 21 recommends that the government 'consider the introduction of more permanent residence visa options for employees of high-value businesses relocating to Australia'.
- Recommendation 22 recommends that the government 'review its approach to the promotion of Australia as a destination for international talent in the FinTech and RegTech sectors, including through focussed marketing of the Global Talent Scheme and the Global Business and Talent Attraction Taskforce in target jurisdictions'.
- Recommendation 23 recommends that the Australian Government 'consider mechanisms to improve visa administration, including faster processing times, and ongoing review of visa eligibility to ensure visa categories are adaptable and responsive to market changes in the FinTech and RegTech sectors'.

Timing on Final Report

The Committee is due to present its final report on 30 October 2021.

> [Source: Senator Andrew Bragg media release 28/04/2021; Select Committee on Australia as a Technology and Financial Centre Second Interim Report]

ASIC review concludes that retail managed funds responded well to COVID-19 challenges

Aim and scope of the review

- As part of its broader response to the initial disruption caused by the COVID-19 pandemic, the Australian Securities and Investments Commission (ASIC) conducted a targeted review of 14 retail funds between June and November 2020 to identify any potential liquidity issues.
- The 14 funds (four mortgage, five direct property and five fixed income funds) were selected by ASIC because the regulator considered that they were 'at risk of facing liquidity issues due to a mismatch between investors' expectations or potential desire to exit and the liquidity of the fund assets in a financially stressed market'.
- The review was based on an assessment of publicly available material. It examined: a) the availability of liquidity monitoring and management tools; b) how responsible entities used these tools; c) the adequacy of their liquidity risk management frameworks; and d) the adequacy of their disclosure around investor liquidity risk and redemption rights.

Key Findings

The review concluded that retail managed funds responded well to COVID-19 challenges in 2020. For example, ASIC found that across the target sample:

- there was 'a significant deterioration in cash received from investor applications versus cash paid out in investor redemptions across the funds' during H1 2020, but despite this, there was 'little or no negative impact on investor redemption opportunities or on the size and frequency of distributions paid to investors'
- there was no material decrease in the liquidity of fund assets over H1 2020
- the responsible entities' liquidity frameworks were generally adequate and liquidity risks and redemption rights were, overall, appropriately disclosed to investors
- responsible entities reported 'a mixed but not severe impact on fund revenues as a result of COVID-19'.

ASIC comments that these findings are consistent with feedback from industry associations about their members' experiences. Commenting on the findings, ASIC Deputy Chair Karen Chester said,

> 'Overall, the responsible entities we reviewed well managed the liquidity challenges and market disruption of COVID-19. As the economic situation improves through 2021, responsible entities should continue to carefully manage the liquidity risks associated with their funds. We will continue to monitor liquidity management by responsible entities and may take compliance or other action where we find misconduct'.
>
> [Source: ASIC media release 30/04/2021]

APRA Deputy Chair John Lonsdale calls on the mutual sector to take steps to address sustainability challenges

In his speech to the Customer Owned Banking Association 2021 CEO and Directors Forum, Australian Prudential Regulation Authority (APRA) Deputy Chair John Lonsdale spoke briefly about current state of the housing market and APRA's expectations of lenders in this context; reflected on the performance of mutual banks, relative to wider industry during the pandemic; flagged some of the key risks facing the mutual sector (including cyber risk); and briefly spoke about APRA's efforts to mitigate the regulatory burden on the sector through taking a proportionate approach 'wherever possible'.

Housing market

- Mr Lonsdale observed that the predominate business of Australia's banking system is mortgage lending. He said that APRA's focus is on ensuring that ADIs manage risks to their balance sheets in the current environment. Mr Lonsdale said that COBA members should be 'particularly attuned to shifts in their risk composition' given they are heavily weighted towards housing.
- Mr Lonsdale said that APRA expects ADIs to be cautious about 'relaxing risk appetite limits and lending standards at this time'. 'In aggregate, we are not seeing a return to higher risk lending, particularly in areas where we have intervened in the past such as investor and interest-only loans. However, it is important that standards are maintained, monitored and tested' Mr Lonsdale said.
- Mr Lonsdale flagged that APRA recently wrote to the 14 largest ADIs requesting more detailed data on their lending portfolios and sought assurances from boards regarding lending standards.
- Mr Lonsdale commented that though the majority of COBA members were not asked to provide this information (in the interests of minimising the regulatory burden), APRA's expectation is that smaller ADIs will be 'rigorous in monitoring and texting their own risk appetite and lending standards, rather than waiting for a call from their APRA supervisor'.
- Mr Lonsdale said that APRA's expectation is that 'all Boards should be closely monitoring their lending standards, comfortable with their risk appetite and testing whether serviceability policies used to assess borrowers remain prudent in an environment of extremely low interest rates'.
- Mr Lonsdale emphasised that competition is a key consideration for APRA when considering intervention and that competition will continue to be a key consideration as APRA continues to 'monitor conditions, rest standards and reflect on what we are seeing'. APRA's objective, he said is to maintain a 'healthy, resilient and diverse industry that can serve the needs of a diverse Australian community in a sustainable manner'.

Performance of the mutual sector during the pandemic

- Mr Lonsdale said that the financial services industry as a whole has 'demonstrated sound operational resilience' despite the disruptions/challenges of the COVID-19 pandemic, and that the banking system (including mutuals) was able to provide 'a much needed cushion for customers and the economy'.
- For example, Mr Lonsdale said that a comparison of the proportion of loans impacted by COVID-19 repayment deferrals written by mutuals relative to the rest of industry over the June 2020 to February 2021 period demonstrates that mutuals have been able to offer high quality loans to their customers at the outset (mutuals had a smaller proportion of loans impacted relative to other lenders); and that mutuals were able to manage through the pandemic in a way that supported their customers as they were able to maintain this position relative to the wider industry over the period.
- Mr Lonsdale said that mutuals have also maintained strong capital and CET1 ratios, and have so far weathered the impacts of COVID-19 well.

Sustainability challenges

- Mr Lonsdale reflected that despite the sector's strong performance, the data referred to so far 'does not tell the full story when it comes to ongoing sustainability'. Mr Lonsdale then talked through data - non-performing housing loans ratio; return on assets ratio; net interest margin; cost to income ratio; cost to assets ratio; share of new housing loans with a loan to valuation ratio (LVR) greater than or equal to 90% - comparing the performance of mutuals against the majors as a means of highlighting some of the challenges facing the mutuals sector.

- One potential risk he identified for the mutual sector concerned the recent uptick in the proportion of new housing loans with an LVR of greater than or equal to 90% from 11% in March 2019 to 17% in December 2020. Mr Lonsdale commented that 'while the LVR is only one of a number of metrics that need to be considered, it does raise the question of whether the mutual sector is taking on more risk in pursuit of market share, and how sustainable that is'.

Boards need to have a strategy for sustainability into the future

- Mr Lonsdale commented that APRA is aware of the cost pressures on the sector and is focused on 'doing what it can to reduce the regulatory burden', but that that 'managing costs does not depend only on adjustments to regulatory requirements'.
- Rather, Mr Lonsdale said that boards need to focus on ensuring they have a strategy to ensure the sustainability of their organisation into the future. 'This means close monitoring of risk, making investments that are manageable and provide an adequate return, and a realistic assessment of the prospect of ongoing profitability' he said. Mr Lonsdale also suggested that it may require COBA members to 'work more closely together, including considering the possibility of mergers where that makes sense'.
- Mr Lonsdale also emphasised the importance of ensuring customer needs continue to be met. He commented, 'As specialised players in a highly commoditised market with large, well-resourced competitors, having the unique business model that mutuals offer and providing a distinctive customer experience are key to remaining relevant to your community of customers. This is something that no regulator is able to influence – it remains the responsibility of Boards and management'.

Cybersecurity

- Mr Lonsdale reiterated that improving cyber resilience across the financial system is a focus for APRA.
- Mr Lonsdale observed that APRA is 'aware that there are areas where the industry is falling short when it comes to implementing comprehensive practices to prevent, detect and respond to cyber threats' and gave a number of examples of this. These included (among others) inadequate patching and limited/untested cyber response plans. In some cases, he said, the risks are 'compounded by limitations in business continuity capability, bringing into question an entity's ability to continue operating after a cyber attack'.
- Mr Lonsdale said that in light of this, APRA intends to update Prudential Standard CPS 232 Business Continuity to drive change in industry practice, including the maintenance and regular testing of back-up data.
- APRA has also commenced the process of requiring entities to have independent cyber security reviews. Nine entities (including some COBA members) are now participating in the pilot and the results are 'expected in the coming months'. Mr Lonsdale said that as yet it is too early for any themes to have emerged.
- Having said this, Mr Lonsdale said that APRA's supervisory activities to date and 'the sizeable volume of entities that requested COVID-19 relief extensions for compliance with our information security standard, CPS 234', suggests that industry has 'much work to do'.
- Outsourcing standard to be strengthened: Mr Lonsdale flagged that APRA has concerns that some entities are not 'adequately interrogating key suppliers' in the context of assessing their cyber controls and that this is an area that APRA intends to strengthen through changes to the outsourcing standard in CPS 231. Mr Lonsdale went on to observe that failures of this kind could have costly consequences - 'Entities are placing a great deal of trust in their providers, so it is important not only to trust but also to verify. Ultimately, if something goes wrong, it's important to remember your customers will hold you, and not your supplier, accountable' Mr Lonsdale said.
- Mr Lonsdale commented that mutuals 'have a history of being able to combine resources effectively to maximise return on investment, and I'm aware that this approach is being adopted to good effect by much of the mutual sector with regard to digital platforms' but that not all entities are adopting this course of action. This could mean, he observed, that some entities are not adequately prepared.
- Mr Lonsdale said that APRA's expectation is that boards are 'focused on the risk of cyber-attacks and taking the necessary steps to address their exposure'. Mr Lonsdale said that though no APRA regulated entities have as yet been 'crippled' by a successful attack, it is 'reasonable to expect that it is just a matter of time'.

Competition and APRA's proportional application of regulatory requirements

- Mr Lonsdale said that APRA is 'aware of the potential for APRA's regulatory requirements to impact smaller entities disproportionately' and that APRA makes 'every effort to ensure mutuals are not being unduly disadvantaged relative to their larger competitors'.

- Mr Lonsdale said that consideration of the impact that changes to the regulatory framework will have on smaller entities 'is now baked into our policy development process' and this is reflected in APRA's approach to regulation. Mr Lonsdale cited the approach APRA took to revisions to the ADI capital framework released in December last year as an example of this.

- Touching briefly on the implementation date for the proposed ADI capital framework Mr Londsale said that APRA is 'still targeting 1 January 2023'. Commenting that it is important to 'hit this target, not only because the reforms have been in the works for some time, but also to give industry and investors some certainty and a base from which to plan. These are significant reforms and we expect ADIs to prepare appropriately to ensure the reforms are implemented, and ADIs are able to manage execution risks'.

- Mr Lonsdale said that 'industry can expect significant differentiation, where appropriate, in the design and application of our initiatives to ensure requirements are proportional and minimise regulatory compliance costs for smaller entities. The benefits will be maximised if mutuals engage with APRA, because the more we understand your business the greater our ability to adjust our requirements accordingly. There is always, however, a balance in designing differentiated requirements, as depositors should expect an equal level of safety wherever their money lies'.
- Conclusions: Mr Lonsdale concluded his speech by stating,

  > 'An enhanced focus from APRA on delivering proportional regulatory requirements will have a tangible impact for mutuals, but it is important to remain realistic about the range of challenges that lay ahead for the sector. The ability to adapt and perform well across a number of areas has been demonstrated, but fundamental drivers of low interest rates and increasing information technology costs are not about to disappear. Remaining relevant will require ongoing change. Boards and management need to recognise that, ultimately it's up to them to do the hard work of executing a strategy that is suitable for their particular business and customer cohort'.
  >
  > [Source: APRA Deputy Chair John Lonsdale - speech to Customer Owned Banking Association (COBA) 2021 CEO & Directors Forum 04/05/2021]

Be prepared: APRA Chair Wayne Byres outlines APRA's work in the key areas of climate risk, GCRA and cyber security

In his speech to the Committee for the Economic Development of Australia, Australian Prudential Regulation Authority (APRA) Chair Wayne Byres spoke about APRA's work in three key areas: 1) climate related risks; 2) GCRA (governance, culture, remuneration and accountability); and 3) cyber security.

Mr Byres observed that these risks are not new, but have 'very much come to the fore in recent years' and require a shift in approach – both in terms of APRA's approach to supervision, and in terms of the way in which industry adapts and responds.

A key theme of the speech is that though the financial system weathered the COVID-19 disruption fairly well, the sector needs to take steps to ensure it is prepared for the impact of known (and accelerating) risks. 'After all, it would be a cruel irony for a financial institution to come through the deepest economic crisis in a century only to be caught unprepared for risks they had ample warning about and should have seen coming' Mr Byres said.

Climate-related risks

- Release of draft guidance: Commenting briefly on APRA's draft prudential practice guide on managing the risks of climate change - draft CPG 229 Climate Change Financial Risks – Mr Byres said that the proposed guidance is intended to assist financial institutions to understand 'where, how and to what extent those risks [climate related risks] will impact their business and consider how they should respond'. Mr Byres emphasised that the guidance does not seek to dictate how businesses should respond, but rather makes clear that 'climate considerations need to be part of any decision-making process if financial institutions want to make well-informed decisions'.

- **APRA is concerned with ensuring industry is prepared:** Mr Byres also said that when he was asked by a journalist what he considers to be 'the biggest risk from a climate perspective' he responded that he was chiefly concerned that financial institutions might be 'caught unawares and hence unprepared' for the changes flowing from it. He clarified that the 'changes' referred to encompass both the physical risks of climate change and the resulting changes in government policies globally, changing investor demands and community expectations. Having said this, Mr Byres went on to acknowledged 'the impetus for the practice guide came from industry requests for clearer guidance on APRA's expectations, and examples of better practice'.
- **The pilot climate vulnerability assessment program:**
  - Mr Byres also spoke briefly about APRA's pilot climate vulnerability assessment (CVA) program. Mr Byres said that starting with the five largest banks, the CVA will 'help to measure the potential financial exposure of institutions, the financial system and economy to climate-related risks; and boost understanding of how institutions might adjust their business models in response to different climate scenarios'. APRA's goal he said, is to 'better identify and measure the links between climate science and financial risk within the context of existing industry risk assessment frameworks. Without this linkage, climate-related financial risk cannot be effectively considered nor managed by the Australian financial sector'.
  - Mr Byres said that APRA is working with the CSIRO to identify whether there is potential to leverage their expertise in climate change and modelling as part of the CVA pilot. This, he commented, would in combination with the climate scenarios developed for international use by the Network for Greening the Financial System, provide a strong science-based foundation and a degree of international comparability to the analysis.
  - Mr Byres said that APRA is approaching the pilot CVA 'very much on a partnership basis, working with the participant banks on the principles, method, scope and timeline as we finalise the design of the assessments'.
  - Once APRA has the results of the process, the regulator will then review and share with industry the 'lessons learned' about the overall outcomes to aid other industry participants. APRA will also consider how the CVA exercise can best be expanded to other parts of the financial sector. Mr Byres anticipates that the results of the pilot CVA will be available 'later this year'.

GCRA related risks

- **Public focus has lessened:** Mr Byres observed that public attention on GCRA issues has 'faded somewhat since the Royal Commission'. He suggested that this is in part due to the 'overwhelming nature of COVID-19'; because 'many banks, insurers and superannuation funds are working to lift their games'; and because APRA reallocated resources and shifted its focus to 'more pressing' issues in 2020 as a result of the pandemic.
- **GCRA related risks remain a key focus:** Mr Byres made clear that APRA remains of the view that the 'systemic weaknesses in GCRA are often the root cause of problems that crystallise into significant, unexpected and damaging financial losses' and on this basis, is committed to lifting standards across the financial system.
- **CPS 511 update:** Mr Byres spoke briefly about APRA's work on releasing an updated prudential standard on remuneration (draft CPS 511) and accompanying guidance to aid in implementation. Reflecting on the changes made to the draft standard in response to initial stakeholder feedback, Mr Byres said that 'probably the most significant change' APRA made was a shift from a more prescriptive to a more principles-based approach. He observed that the proposed principles-based approach has however, 'led to requests for more guidance on how to turn the principles into practice'. Mr Byres said that the draft guidance is designed to assist in this regard, 'particularly as many boards are not sitting and waiting for the final standard to be released, and want to get on and make changes to their arrangements now'.

  [Note: Draft CPG 511 has since been released for consultation. You can find a brief overview in a separate post in this issue of Governance News under the heading, Remuneration.]
- **Pilot risk culture survey:**
  - Mr Byres said that APRA is trialling a new approach to examining risk culture using a risk culture survey modelled on the successful British Banking Standards Board Employee Survey.
  - The survey involves staff at the 10 general insurers that are participating in the pilot program, completing around 40 questions exploring their attitudes and behaviours in relation to risk including their willingness/capacity to speak up 'when things aren't right'.
  - Mr Byres said that though the results have been returned, it is as yet 'too early to say much about them' except that there was good coverage of staff across each of the pilot entities.
  - Mr Byres said that APRA plans to use the survey to identify themes impacting risk culture across the industry as well as to identify particular institutions for closer inspection. The survey is also expected to assist organisations to assess their risk culture maturity over time and relative to peers, identify areas where action is required and support them in fulfilling their obligations under APRA standards.

- Mr Byres said that APRA hopes that the survey will also 'provide important evidence of whether all of the efforts to improve risk culture, within individual institutions as well as across the industry, are having a genuine impact'.

Cybersecurity risks

- Independent cyber security reviews:
  - Mr Byres said that 'work is now well underway' to finalise a process of process of independent cyber security reviews across all APRA-regulated sectors.
  - An initial assessment with nine pilot entities is nearing completion. Based on learnings from the pilot, APRA plans to ask all APRA-regulated entities to conduct independent assessments against CPS 234 over the next 12 month period, to provide APRA with a 'baseline level of assurance across the system'.
- Pilot data collection: Mr Byres said that APRA is also piloting a new data collection exercise on technology and cyber risk to provide the regulator with access to 'better information on an ongoing basis'.
- Cyber defence testing pilot:
  - Mr Byres said that APRA is working with CFR agencies, on a more active cyber defence testing regime. This involves 'active probing for gaps and weaknesses in an institution's cyber defences, using tools and techniques employed by real life adversaries'.
  - A pilot exercise is on foot which APRA hopes will provide both insights into the cyber resilience of the institutions that are part of the pilot program, and 'any systemic weaknesses that may present a risk to the integrity of the Australian financial markets and financial system'.

[Source: APRA Chair Wayne Byres - Speech to the Committee for the Economic Development of Australia 28/04/2021]

In Brief | New licensing requirement for providers of debt management services: From 1 July 2021 (subject to transitional arrangements) providers of certain paid debt management services will need to meet new licensing requirements in order to continue to provide their services. ASIC has released an information sheet explaining the new requirements

[Source: ASIC media release 05/05/2021; INFO 254: Applying for a credit licence or variation]

In Brief | 49% of financial institutions do not analyse how their portfolio impacts the climate according to a report from the Climate Disclosure Project, despite their net-zero commitments

[Source: Climate Disclosure Project report: The Time to Green Finance, Financial Services Disclosure Report 2020]

Risk Management

Top Story | AICD research confirms directors want the government to prioritise climate risk

he Australian Institute of Company Directors (AICD) has released its first bi-annual Director Sentiment Index for 2021. The report is based on the results of a survey of AICD member opinions and future intentions on a range of issues including the economy, government policy and governance regulations.

One headline finding that stands out in the report is the high priority directors place on climate risk and related issues. Another is the strong focus being given by many boards to increasing board diversity (and in particular skills diversity).

A high level overview of some of the key findings is below.

An increasingly positive outlook

- Overall director sentiment continued its upward trajectory up from a low in H1 2020 of -59.6%, to -37.3% in H2 2020 to +7.2% (a record high point). This is attributed in the report primarily to uplifts in business conditions and a strengthening of domestic and global economic indicators.
- Global economic outlook: The survey found that directors' expectations of the Australian, Asian, Chinese, US and European economies have also improved. Of this group, the outlook for the European economy is the most negative at +5% (up from -63% in H2 2020).
- Australian economic outlook: Directors across all states are more positive about both current and future economic outlook than in H2 2020. Looking at the next 12 month period, the survey found that WA based directors are the most optimistic about the outlook for their state with 82% viewing it positively, followed by NSW (53% viewing it positively). QLD is the most pessimistic (51% holding a negative view and only 19% holding a positive view). The report suggests that the result in QLD could have been influenced by COVID-19 outbreak immediately prior to the survey period.
- Outlook for individual Australian organisations: Directors are also more optimistic about the general business outlook and the business environment for their own organisations for the rest of this year (the period to 31 December 2021). For example:
- Director confidence in the general business outlook has substantially increased since H2 2020 from 21% (H2 2020) to 50%.
- The majority (60%) of directors now expect their business to grow and 13% of this group expect their business will substantially expand over the period.
- Only 10% of directors surveyed expect that their own organisation to contract.

Key director concerns

- Asked what issues 'keep them awake at night' directors nominated the following as their top five concerns: 1) sustainability and long term growth prospects; 2) cyber crime; 3) the impact of COVID-19; 4) data security; and 5) climate change risk.
- Legal and regulatory compliance ranked sixth on the list of top concerns followed by culture.

Not top of mind?

- Workplace sexual harassment ranked towards the bottom of the list at 19
- 'Director reputation in the community' ranked 20
- Shareholder activism ranked even lower down the list of concerns at 23.

Climate change

- **Climate change should be a key short and long term priority for government:** Consistent with the last survey, directors nominated climate change as the key top priority for governmen t to tackle in the short and long term.
  - Short term priorities: The top three short term priorities directors would like to see the government address are: 1) climate change; 2) energy policy; and 3) taxation reform.
  - Long term priorities: The top three long-term priorities directors would like to see the government address are: 1) climate change; 2) the ageing population; and 3) energy policy.
- **Priorities for infrastructure investment:** The top three priorities in terms of infrastructure investment were nominated as: 1) renewable energy sources; 2) regional infrastructure and 3) water supply.
- **Climate is also nominated as a key economic challenge**: COVID-19 remains the main economic challenge currently facing Australian business, with 41% of directors surveyed listing the pandemic as a key challenge, followed by concerns around global economic uncertainty (31%) and climate change (25%).
- **Views on climate policy:**
  - 67% of directors support a shift in policy focus towards building national adaptability/resilience to climate change
  - 63% of directors support having clear five-year emissions reductions targets in place to provide a clear pathway to the longer-term net zero goal
  - 51% of directors support the introduction of more ambitious targets for renewable energy
  - 58% of directors support an increase in government subsidies for business spending on green R&D and innovation
  - Only 6% of directors support the introduction of a price on carbon via a carbon tax

Commenting on the findings, AICD Managing Director and CEO Angus Armour said 'Directors clearly perceive that climate change risk is not a niche issue only relevant to some sectors, with the challenge now a mainstream item on boardroom agendas'.

Board diversity

The survey found that increasing board diversity is a focus for a number of boards though, overall boards appear to be primarily focused on increasing skills diversity (including enhancing technology skills in the boardroom) and increasing gender diversity.

- **Skills diversity:** In particular, boards appear to be focused on increasing skills diversity. For example:

- 80% of board are either actively or very actively seeking to increase skills diversity. Increasing digital literacy and technology skills appears to be a key focus: 63% said their board is either actively or very actively seeking to do so.
- Only 9% are not actively or not at all actively seeking to increase board skills diversity.

- **Gender diversity:** Gender diversity also appears to be a key focus with 57% of directors indicating that their board is actively or very actively seeking to increase gender diversity. However, over a quarter of directors surveyed (26%) indicated that increased board gender diversity is 'not relevant' and 17% of boards are either not actively looking or not very actively looking to increase board gender diversity
- **Ethnic diversity:** Interestingly, the report found that though 39% of boards are actively/very actively seeking to increase ethnic diversity, 61% of boards appear not to see this as a priority. Of this group, 30% not actively or not very actively seeking to increase board ethnic diversity and 31% indicating that doing so is not relevant.
- **Age diversity:** The report found that increasing age diversity in the boardroom appears to be less of a focus (relative to other forms of diversity). The report found that:36% or boards are actively or very actively seeking to increase age diversity; 64% are either not actively or not very actively seeking to do so (30%) or do not see it as relevant (34%).

[Sources: AICD media release 30/04/2021 - the full text of the report - Director Sentiment Index: Research Findings First Half 2021 - and the AICD's summary of the key results are available for download at the bottom of the media release]

The government has announced a $6.9m cybersecurity grants program aimed at enabling SMEs to access expert help to strengthen their cybersecurity systems

Minister for Industry, Science and Technology Christian Porter has announced a $6.9 million national program – The Cyber Security Business Connect and Protect Program - aimed at providing SMEs with free access to expert assistance to upgrade their cybersecurity systems.

Under the program, 14 organisations (full list here) will receive funding to work directly with businesses to help identify cybersecurity risks and assist them to implement measures to strengthen their systems.

[Source: Minister for Industry Science and Technology Christian Porter media release 27/04/2021]

In Brief | How to ensure stakeholder voices are heard at board level: The AICD has released guide to assist directors to ensure that non-shareholder stakeholder voices are heard at board level. The guidance is informed not only by discussions with directors but by discussions with a wide range of stakeholders including consumer, worker and supplier representatives and Aboriginal and Torres Strait Islander peoples, and campaigners

[Sources: AICD media release 27/04/2021; AICD report: Elevating stakeholder voices to the board: A guide to effective governance]

In Brief | Facilitating the trading of Australian Carbon Credit Units (ACCUs): The Clean Energy Regulator is calling for expressions of interest to develop a carbon exchange. The Clean Energy Regulator estimates that by 2030, the exchange will save business up to $100 million in transaction costs associated with trading ACCUs. The deadline for expressions of interest is 11 June

[Source: Clean Energy Regulator media release 28/04/2021]

In Brief | The Victorian government has unveiled a climate transition strategy that includes targets to reduce the state's greenhouse gas emissions from 2005 levels by 28–33% by 2025 and 45–50% by 2030. The Investor Group on Climate Change has suggested that the more ambitious reductions targets set by both NSW and Victoria could act as a platform for the Federal government to strengthen Australia's national emissions reduction goals ahead of COP26, more closely aligning Australia with international peers and serving to better position the country to attract net-zero investment

[Source: Department of Environment, Land, Water and Planning media release 02/05/2021]

Insolvency and Restructuring

Supporting the COVID-19 recovery: The government has announced planned further changes to the insolvency framework

The Treasurer and Assistant Treasurer have announced plans to consult on further insolvency reforms to support business and promote Australia's COVID-19 recovery. Specifically, the government intends to:

- consult on the treatment of trusts under insolvency law
- review whether the insolvent trading safe-harbour provisions remain fit for purpose
- consult on amendments to schemes of arrangement processes with a view to better supporting businesses. This will include considering introducing a moratorium on creditor enforcement while schemes are being negotiated.

The Treasurer and Assistant Treasurer also said that the government intends to increase the threshold at which creditors can issue a statutory demand on a company from $2,000 to $4,000 with a view to helping to distressed but viable companies from being pushed into liquidation over small debts.

[Sources: Joint media release Treasurer Josh Frydenberg and Assistant Treasurer Michael Sukkar 03/05/2021]

Other News

In Brief | The government has announced an additional $1.7 billion investment in childcare in the 2021-22 Budget aimed at improving affordability and increasing workforce participation, especially among low and middle-income families. The changes to the childcare subsidy will flow from 1 July 2022. Academics have suggested however, that the changes will not address systemic affordability issues, with childcare remaining unaffordable for many

[Sources: Joint media release: Treasurer Josh Frydenberg, Minister for Foreign Affairs and Minister for Women Marise Payne; Minister for Education and Youth Alan Tudge; Minister for Superannuation, Financial Services and the Digital Economy Jane Hume 02/05/2021; The Conversation 02/05/2021]

Contacts

Mark Standen
Partner

—

mark.standen@minterellison.com
T +61 2 9921 4902 | **M** +61 412 104 902

Siobhan Doherty
Partner

—

siobhan.doherty@minterellison.com
T +61 2 9921 4339 | **M** +61 413 187 544

Kate Hilder
Consultant

—

kate.hilder@minterellison.com
T +61 2 9921 8785