Governance News

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

3 November 2021

Contents

Boards and Directors

A roadmap for existing and future directors: Governance Institute report provides insights into the key challenges board are likely to face looking ahead to 2025

The Governance Institute of Australia has released a report - The Future of the Board – highlighting the key challenges that current board members, senior executives and governance/risk professionals consider directors are likely to face looking ahead to 2025.

A key message is that the role of directors, and the pressures they face are expected to continue to expand. Governance Institute of Australia Chair Pauline Vamos said:

> 'We are about to see the pressure turned up on boards as shareholders and the community expect directors to be more in tune with the full range of ESG or non-financial risks, navigating fallout from the pandemic, and responding to a regulatory and technology landscape moving at hyper speed.

The report is based on the results of a survey of 550 non-executive directors, CEOs and C-suite executives, company secretaries and senior governance or risk management professionals, as well as two working groups comprised of senior directors and industry leaders. Overall, 69% of survey respondents are current board members, 40% sit on more than one board. The survey findings were supplemented with workshop discussions.

Page 31 of the report is a suggested one page 'roadmap for success' for future board members which draws together and builds on some of the key conclusions from the report.

Key Takeaways

The top challenges facing society (and therefore organisations) by 2025 can't be limited to just three

- Asked to rank the top three issues that will have most impact on their organisation by 2025 respondents ranked the following five issues as equally significant challenges: 1) climate change; 2) fallout from the COVID-19 pandemic; 3) economic instability, 4) technology and digitalisation; and 5) cyber security.
- Looking at internal challenges facing future boards:
  - Sustainability of business ranked as the top internal challenge for boards by 2025. This was closely followed by: organisational transformation and adaption; stakeholder engagement; ESG; and human resources/people and development which all ranked equal second.
  - Interestingly, recruitment and retention of executive talent, digital transformation, board composition and succession planning and diversity, equity and inclusion ranked equal last in the list of 12 available options.

Digital disruption

Looking more closely at the challenges respondents consider boards will face around digital disruption by 2025:

- Respondents ranked cybersecurity and data privacy and 'understanding the potential risks posed by newly deployed or planned technology' as the top challenges.
- Governance and compliance and monitoring the pace and scale of innovation were ranked equal second in the list of top challenges.
- Interestingly, respondents ranked 'accelerating demand and expectation for flexible workforce models' as the least important of the possible seven possible options.
- The report suggests that these results may reflect concern among directors that the necessarily rapid uptake and roll-out of new technologies during the pandemic may have been 'too quick', and that the associated risks may not have been 'fully understood'.

Top ethical challenges facing boards in 2025: Social licence to operate and ESG top of the list

- Respondents to the survey ranked the social licence to operate as the top ethical challenge for boards looking ahead to 2025. Workplace conduct and culture ranked second behind social licence to operate. Interestingly, respondents were least concerned about supply chain integrity (modern slavery).

  [Note: The Australian Council of Superannuation Investors (ACSI) published a comprehensive review of statements lodged by top ASX companies under the Modern Slavery Act 2018 (Cth). ACSI found that the majority of statements adopted a 'race to the middle approach' which ACSI describes as 'seeking to satisfy the legal requirements of the MSA without disclosing more than key peers'. You can find an overview and discussion of the of ACSI's report here.]

- According to the report, working group participants spoke about social licence to operate (and ESG more generally) as a growing area of concern and focus for boards in recent years. Andrew Stevens (Chair, Industry Innovation and Science Australia and Non-executive Director, Stockland) is quoted as observing that ESG 'is of major significance now' (rather than a marginal consideration/concern).
- Working group participants also observed that most boards are alive to the link between their social licence and successful stakeholder engagement and the potentially significant consequences of failure.
- The report observes that board members already face steep accountability requirements imposed by various legislations and at common law and new reporting requirements aligned with the rise of ESG issues are also emerging. The report questions whether this increased accountability burden on directors will make taking on a board role less desirable in future.

  'As the importance of ESG grows, it seems likely that more obligations relating to these areas will be placed on directors. This will alter the essence of what it means to be a director and the risks that come with taking on a board position. Will this make the role less attractive and therefore make recruitment of new board members more difficult?

Range of views on director overboarding and tenure limits

- Survey respondents generally agreed that there should be a limit on the number of boards directors can sit on an a limit of time directors should be able to sit on the same board:
  - 71% of survey respondents agreed that that there should 'restrictions' on the number board seats a single director is able to hold simultaneously. 54% of respondents consider that directors should be limited to sitting on a maximum of four boards.
  - 84% of survey respondents consider there should be a limit on the length of time a board member can serve on the same board. Of this group, 36% consider the limit should be six-nine years and 23% consider the limit should be slightly longer at 10 years.
- However, participants in the second workshop discussion expressed a range of views on these issues, with some questioning whether the views of survey respondents were too restrictive/conservative and advocating instead a case-by-case approach. It was also suggested that the imposition of limits in line with the views of survey respondents would require a rethink of the way in which directors are remunerated as existing director pay levels have been set without these limits in mind.
- The report observes that in light of the divergent views on these issues, 'it could be hard to implement strict universal limits on how many board positions a director holds, and for how long'. The report suggests that 'it may be that the "right" number of board positions for a director to hold will depend on the unique mix of organisations they serve, taking into account differing time commitments'.
- The report further suggests that:

  'Defining whether the board is getting sufficient value from each of its directors could be a challenge for the future board to address. Perhaps this could be an aspect of the values and ethics future board members will need to have: to consider if they are truly able to give their best effort to all the boards they serve'.

Remuneration

The report suggests that the rethink of executive and board pay triggered at a number of companies by the circumstances created by the COVID-19 pandemic, should now 'go further', including considering increasing pay for non-executive directors in the interests of both increasing board diversity and tackling over-boarding.

The report suggests that:

> 'Discussion of board-level pay should be holistic, taking into account how it is treated at a not-for-profit, for example, compared to how it is treated at a corporate or listed company. There is also increasing support for taking into account ESG metrics such as diversity or climate targets when setting pay. There is an opportunity to radically rethink remuneration. Higher pay for NEDs could be a factor in addressing overboarding and could help to recruit board members from under-represented backgrounds. More appropriate pay for CEOs and other senior executives could help to address inequality, rather than embedding it'.

Board composition and succession planning

- Top skills future board members will need?
  - Survey respondents ranked strategy as the top skill/competency future board members will need, followed by leadership and management skills.
  - The report interprets this as a signal that 'future board members will be valued for a skillset that goes beyond sector-specific experience' and as an indication that 'the board will work more closely with management in future and will need the necessary skills to be effective in this capacity'.
  - Technology and digital literacy was ranked third in the list of skills/competencies future board members will need. The report interprets this as confirmation that the role of technology within organisations (and in the board context) is expected to grow and of the 'growing understanding that there will be a need for specific technical skills and experience on the board that go beyond those associated with the sector in which the organisation operates'.
- Diversity and inclusion – moving beyond labels?
  - Asked to rank in order to importance six facets of board diversity, survey respondents ranked diversity of skills and experience in equal first place, above board gender diversity, ethnicity, age and nationality. This view was reflected in workshop discussions.
  - The report comments that workshop participants 'framed the idea of skills and experience as a means of 'looking as widely as possible for candidates that will bring the specific skills the board needs and thinking creatively about how to source and nurture talent. In this sense placing skills and experience above other areas of diversity such as gender or ethnicity reflects a desire to move beyond labels and groups to get the best candidates for the board'
  - Separately, asked to nominate the most important factors in defining board dynamics by 2025, diversity in the boardroom to inform decision making was ranked second only to a culture transparency, trust and respect around the board table. The report suggests that this lends further support to idea that 'when survey respondents ranked skills and experience

as the most important when it comes to diversity and inclusion, it was a matter of priority rather than preference, and that ultimately all facets of diversity are important elements of improving board effectiveness'.

- Scope to rethink the Non-executive director (NED) recruitment process?
  - The report notes that participants the first workshop considered absence of prior NED experience should not be a barrier to appointment. They argued that the qualifications for board membership should be revisited. For example, it was suggested that recruiters should take into account the mindset of the candidate and their background (eg 'whether they are predisposed to the ESG mindset that is becoming so important'). There should also be less reliance on specific industry experience and specific skills.
- Training priorities for future board members:
  - Asked to nominate what the board's educational priorities will be in future, survey respondents ranked strategic skills as the most important skill, followed by risk management and navigating global issues such as corporate social responsibility.
  - The report interprets this as a sign that future directors will be expected to 'move beyond technical skills to a develop a broader skillset, with a focus on non-financial areas of operation that are linked to global issues'.
  - In terms of delivery method, the majority of survey respondents consider continuing professional development to be the most important way of acquiring and developing these skills.
  - Among other things, the report suggest that future board members should take a more proactive approach to 'setting the course of their training' and seek out a mixture of soft and technical skills. It's suggested that this could include training in 'areas such as climate change, which will become central to decision making'.

The board's relationship with management – working more closely without blurring the distinction between roles

- Survey respondents considered that 'transparency, trust and respect between the board and management' will be the most important factor in defining the dynamic between boards and management by 2025.
- The second most important factor nominated by survey respondents was that 'board members spend time immersing themselves in the organisation to better understand the nature of the organisation and challenges for management'.
- The report observes that there was a diversity of views among workshop participants around the second point and more particularly the extent to which the boards should involve themselves in day-to-day management. However, there was generally acceptance that the relationship between boards/management is becoming closer.
- Ultimately, the report concludes that:

  'As they face increased accountability for the actions of their organisation, future board members will need to be comfortable working closely with management. They will need to help management with operational issues but not become involved in day-to-day management'.

Corporate failure risk

- Survey respondents rated 'ethics and values' and 'culture' ahead of financial management skills as the two most important areas boards need to focus on to prevent corporate failure.
- The report suggests that this reflects the 'growing importance of ESG: in order to avoid corporate failure, the board of the future will need to apply an ethical lens to its work. It will become increasingly important for the board to consider the moral dimensions of a certain course of action, as well as legal or compliance issues'.

Boards' approach to risk more generally

- The report observes that workshop participants considered that boards have tended to adopt a conservative approach to risk. During the pandemic boards' approach to balancing risk against opportunity may have shifted with boards having to adopt a 'bolder approach' and be more 'opportunity focused' and that they could learn from this experience going forward.
- The report suggests that:

  'Future board members will need to take a bold approach to risk management, being willing to take more calculated risks. They should be mindful that risks bring opportunities as well as threats and avoid overemphasising the threats at the expense of realising the opportunities'.

  [Sources: Governance Institute media release 03/11/2021; Full text report: Future of the Board]

Top Story | Status update: Director IDs – what directors need to know now

Eligible directors and those wishing to apply before their appointment are now able to submit an application for a Director Identification Number (Director ID).

Key Takeouts

- All eligible directors and those who wish to apply before their appointment, are now able to submit their application for a Director Identification Number of (Director ID).
- The deadline for submitting an application differs according to the date at which directors were appointed.
- According to the ABRS website directors (under the Corporations Act) who are appointed as a director between 1 November 2021 and 4 April 2022 will need to apply for a Director ID within 28 days of their appointment as a director. The deadlines by which all other eligible directors will need to have a Director ID are longer.
- Eligible directors who fail to meet their Director ID obligations could be issued with an infringement notice or face civil or criminal penalties.
- Directors unable to apply within the required timeframe are able to apply for an extension using the form now available on the ABRS website.

Status update: Rollout of Director IDs

Schedule 2 of the Treasury Laws Amendment (Modernisation and Other Measures) Act 2020 introduces a new requirement for directors or alternate directors of companies or bodies corporate registered under either the Corporations Act 2001 (Cth) (Corporations Act) or the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) (CATSI Act) to hold a 'director identification number' or Director ID.

The change is part of the government's Modernising Business Registers Program (summarised here).

What is a Director ID?

A Director ID is a unique 15 digit numerical identifier that will be assigned to each eligible director (upon a one-off application by the director) as proof of their identity.

Directors will then keep their Director ID regardless of whether they change companies, change their name, cease to be a director or move interstate/overseas. This will make it easier to trace directors' relationships with companies over time.

The primary aim of the new requirement is to make it easier to track unlawful activity, including phoenix activity, though it's also expected that it will have other benefits. For example: it is expected to reduce time/cost for administrators and liquidators by making it simpler to track directors and their corporate history.

Once directors receive their Director ID they will need to supply it to the record holder of their company (eg company secretary) and, if appointed as a director to other companies in future, will need to supply it to the record holder of that company.

Who needs a DIN?

Directors (or alternate directors acting that capacity) will need to apply for a DIN if they are a director of either:

- a company, a registered Australian body or a registered foreign company under the Corporations Act; or
- an Aboriginal and Torres Strait Islander corporation registered under the CATSI Act

Director ID application deadlines

An instrument - Corporations (Director Identification Numbers—Transitional Application Period) Instrument 2021 – specifying the deadlines by which existing and future directors will need to have applied for a Director ID was registered on 5 October 2021.

The deadline for submitting a Director ID application differs according to the date at which directors were appointed. The explanatory statement accompanying the instrument specifies that these deadlines have been set to allow time for the new system to be properly tested and to allow sufficient time for eligible directors to submit their applications.

The ABRS website provides further detail on these deadlines. In summary:

Existing directors

- Eligible persons under the Corporations Act who are existing directors or who are appointed as a director on/before 31 October 2021 will have until 30 November 2022 to apply.
- Eligible persons under the CATSI Act who are existing directors or who are appointed on or before 31 October 2022 will have until 30 November 2023 to apply.

New directors

Eligible persons under the Corporations Act who are:

- appointed as a director between 1 November 2021 and 4 April 2022 will need to apply for a Director ID within 28 days of their appointment as a director
- appointed as a director from 5 April 2022 will need to apply for a Director ID prior to their appointment.
- Eligible persons under the CATSI Act who are appointed as directors from 1 November 2022 will need to have applied for a DIN prior to their appointment.

Extensions

Directors who are unable to apply by the relevant deadline can apply for an extension using this form.

Penalties for non-compliance

Eligible directors who fail to meet their Director ID obligations could be issued with an infringement notice or face civil or criminal penalties.

Applications are now open

- The Director ID application process opened on 1 November 2021. Directors, and those wishing to apply before their appointment, are required to make the application themselves.
- There are three methods of submitting a Director ID application: 1) online, 2) over the phone or 3) in paper form.
- Generally, Australian directors located within Australia can elect to use any of these methods, according to preference. The ABRS website makes clear that applying online is the quickest method.
- Foreign directors will generally need to submit an application in paper form, or (depending on whether they are able to supply the necessary identity documents to support their application), over the phone. A high level overview of the requirements is below.

Applying online

Directors eligible for a myGovID are able to apply online via the ABRS website.

In order to apply online Directors will need to have a standard or strong identity strength myGovID. In addition, the application process also requires the following other information as proof of identity:

- residential address (as recorded by the Australian Taxation Office (ATO))
- specific information as proof of identify from two of the following list: bank account details, an ATO notice of assessment, super account details, a dividend statement, a Centrelink payment summary, and/or PAYG payment summary.

Directors also have the option, but are not required, to supply their individual Australian Tax file number (TFN). According to the ABRS website, supplying a TFN will speed up the application process.

You can find more detail around the specific identity information required to support an online application on the ABRS website here.

Applying over the phone

In order to apply over the phone, Directors will need to provide the same information as is required to apply online (with the exception of a myGovID), as well as certain other additional other information as proof of identity including (among other things): specific details from either a Medicare card or an Australian driver's licence/learner's permit.

The information provided must match in the information held by the ATO. You can find further details about the requirements for phone applications on the ABRS website here.

Paper applications

If Directors are unable to supply the identity documents required to apply using other methods, they will need to submit an application in paper form attaching certified copies of certain additional proofs of identity. In practice, this means that foreign directors located outside Australia will need to apply in paper form.

Details of which documents are required to support paper applications from Directors applying from within Australia and Directors applying from overseas can be found on the ABRS website here.

The ABRS website directs that Directors applying from outside Australia who are experiencing difficulty in having their documents certified as required should contact the ABRS.

Disclosure and Reporting

Guarding against greenwashing: The CFA Institute releases voluntary global ESG standards investment products

- The CFA Institute (a global association of investment professionals) has released new voluntary Standards - Global ESG Disclosure Standards for Investment Products – for disclosing how investment products consider ESG issues. The Standards are based on 'principles of fair representation and full disclosure of environmental, social, and governance issues within the objectives, investment process, and stewardship activities of investment products'.
- The Standards have been designed to have broad application. The CFA Institute states that they are intended to apply to 'the full range of investment vehicles, asset classes, and ESG approaches offered in markets around the world'. In this respect they are said to differ from existing voluntary standards and the various regulatory requirements that apply in different jurisdictions which tend to focus on a particular asset class/product. Appendix D of the Standards details the relationship between the Standards and some other existing regulatory requirements and voluntary standards. The CFA Institute has also published a document outlining how the disclosure requirements in the Standards compare with the European Union Sustainable Finance Disclosure Regulation regulations.
- The key objective is to improve transparency and enable easier comparison, evaluation and understanding of ESG investment products by investors, advisors and distributors. This is also expected to help to address the issue of greenwashing. The CFA Institute states:

  > 'The inadequacies of current investment product ESG disclosure practices have resulted in allegations of "greenwashing," whereby marketing materials intentionally or inadvertently mislead investors about the ESG approaches used in an investment product, the ESG characteristics of an investment product, or the degree of influence that an investment product has on ESG issues. The Global ESG Disclosure Standards for Investment Products seek to mitigate "greenwashing" and provide transparency about the ESG approaches used in investment products by standardising the information that is disclosed about an investment product's consideration of ESG issues in its objectives, investment process, or stewardship activities'.

- Importantly, The CFA Institute makes clear that the Standards do not include requirements for naming, labelling, classifying or distinguishing between different types of ESG investment products.
- The Standards have been released following industry consultation and are jointly approved by the CFA institute and its ESG Technical Committee.
- The CFA Institute intends to release various other materials in 'early 2022' to support adoption/implementation of the Standards including: procedures for independent assurance of investment product ESG disclosures; a handbook providing guidance on the Standards; and an optional template for ESG Disclosure Statements.

  [Sources: CFA Institute media release 01/11/2021]

IOSCO says setting clear regulatory and supervisory expectations for asset managers is key to addressing greenwashing

The Board of the International Organization of Securities Commissions (IOSCO) has published a report that includes five recommendations highlighting 'potential areas for consideration as regulators and policy makers consider developing sustainability related rules and regulations' to improve sustainability related practices/disclosure in the asset management industry.

The recommendations are as follows.

- Recommendation 1: Securities regulators and/or policymakers, should consider setting regulatory and supervisory expectations for asset managers in respect of the 'development and implementation of practices, policies and procedures relating to material sustainability-related risks and opportunities' and related disclosure.
- Recommendation 2: Securities regulators and/or policymakers, should consider 'clarifying and/or expanding on existing regulatory requirements or guidance or, if necessary, creating new regulatory requirements or guidance, to improve product-level disclosure in order to help investors better understand: (a) sustainability-related products; and (b) material sustainability-related risks for all products'.

- Recommendation 3: 'Securities regulators and/or policymakers, as applicable, should have supervisory tools to monitor and assess whether asset managers and sustainability-related products are in compliance with regulatory requirements and enforcement tools to address any breaches of such requirements'.
- Recommendation 4: 'Securities regulators and/or policymakers, as applicable, should consider encouraging industry participants to develop common sustainable finance-related terms and definitions, including relating to ESG approaches, to ensure consistency throughout the global asset management industry'.
- Recommendation 5: 'Financial and Investor Education. Securities regulators and/or policymakers, as applicable, should consider promoting financial and investor education initiatives relating to sustainability, or, where applicable, enhance existing sustainability-related initiatives'.

Announcing the release of the report and the recommendations, IOSCO said greater regulatory clarity around how asset managers consider and disclose sustainability risks and opportunities is necessary both to protect investors and to ensure market integrity.

Erik Thedéen, head of the Swedish Financial Supervisory Authority and Chair of IOSCO Taskforce that issued the report commented:

> 'Our common objectives as securities regulators are to protect investors, as well as to support market integrity, by ensuring transparency and disclosure of information that is material to investment decisions. Improving underlying data is critical but not sufficient if asset managers do not properly integrate sustainability risks into their risk management procedures – or if they misrepresent the ESG features or performance of their funds to their investors. Setting regulatory and supervisory expectations is therefore fundamental to addressing issues relating to risk mismanagement and greenwashing. This report sets out IOSCO´s view of what these expectations should be to support asset managers in addressing current challenges.'
>
> [Source: IOSCO media release 02/11/2021; Full text report: Recommendations on Sustainability-Related Practices, Policies, Procedures and Disclosure in Asset Management Final Report November 2021]

Global report finds articulating a net-zero target is now 'standard practice' for large corporates

EcoAct has released its latest annual analysis of climate disclosure by FSTE100, EuroStoxx50 and DOW 30 companies.

A headline finding is that momentum towards adoption of the TCFD recommendations and Science Based Targets (SBTs) continues to build and articulation of a net-zero commitment is now more or less 'standard practice' for large corporates.

However, the report finds that if global warming is to be limited to 1.5 degrees, more action is needed to reduce emissions across all Scopes.

EcoAct expresses the strong hope that COP26 will deliver agreement on a 'global pathway to net zero' and emphasises the need for clear government policy to incentivise long-term emissions reduction.

Managing Director, Northern Europe, EcoAct Stuart Lemmon commented:

> 'Businesses have a vital role to play in tackling climate change but need to be led by more ambitious long-term policy and regulation, underpinned by realistic frameworks to work within, to achieve net zero. The outcomes of COP26 will be pivotal for turning intent into action. Our analysis shows that when businesses have a clear framework to follow, the uptake on climate change action is vastly accelerated. This decade represents our very last chance to implement the climate policies and strategies that will see us achieve net-zero. We no longer have time to rely on a minority of leading climate change actors. All governments, businesses and society at large must do everything they can to drive rapid and meaningful change.'

Key Takeaways

- Net zero: The number of companies across all indices setting a net zero by 2050 target continues to trend steeply upwards:
  - In 2019 only 20% of companies analysed had set a net zero target. In 2020 this more than doubled to 44%. In 2021, 65% of companies have set a target.

- Looking more closely, FTSE 100 companies are leading the way with 66% of companies having set a target (up from 45% in 2020). However, there is little variation across indices : Euro STOXX 50 companies are only 2% behind the FTSE 100 and the DOW 30 only 1% lower still.
- Based on these findings, the report suggests that 'communicating a commitment to climate action is becoming standard practice for large international corporates'.

▪ Likewise the number of companies setting science based targets also continues to increase:
  - 65% of companies have now set a Scope 1 and 2 science based target (SBT) (up from only 39% in 2020).
  - Only 39% have set a Scope 1, 2 and 3 SBT.
  - 51% of companies that have set a science based target have validated it with the SBTi.
  - Only four companies (Astrazeneca, Vodafone, Apple, and SAP SE) have set Scope 1, 2 and 3 SBTi-validated SBTs aligned with a 1.5 scenario.

▪ TCFD-aligned reporting continues to gain traction:
  - The report found that 79% of companies have now aligned their reporting with TCFD recommendations (up from only 50% in 2020)
  - All TCFD-aligned companies reported board level oversight of climate change issues. Interestingly, the report found that 71% of non-TCFD aligned companies also reported that the board have oversight of climate issues.
  - Overall, 44% of companies have undertaken and reported details of their climate scenario analysis (up from 20% in 2020)
  - 54% of companies include both physical and transitional climate risks within the principal risks section of their annual report (up from 42% in 2020).
  - 78% of companies detail how they are mitigating these risks (up from 60% in 2020).

▪ The report also highlights the link between TCFD-aligned reporting and the setting/adoption of more ambitious targets. According to the report, TCFD-aligned companies are generally more likely to have set targets across all scopes as well as to have made a commitment to net zero:
  - 72% of TCFD aligned companies have set a net zero target (vs 42% for non-TCFD aligned companies)
  - 71% of TCFD-aligned companies have set a Scope 1 and 2 emissions reduction targets (vs 45% for non-TCFD-aligned companies)
  - 43% of TCFD aligned companies have set a Scope 3 emissions reduction target (vs 26% for non-TCFD-aligned companies)

▪ Emissions reduction:
  - 74% of companies reported a reduction in their Scope 1 and 2 emissions in line with limiting global warming to 1.5 degrees
  - 22% of companies reported a reduction in their Scope 3 emissions in line with a 1.5 degree scenario. The report comments that lack of disclosure - many companies are not reporting Scope 3 emissions – makes assessing this a challenge.
  - The report identifies SBTi verification of targets as 'the most effective driver of emissions reduction, particularly for Scope 3 emissions'.

The report comments that while improvements in reporting are positive,

- This year, reductions have been artificially buoyed
- for many due to the impacts of the COVID-19
- pandemic. It appears to be an exceptional year
- for emissions reductions which is good news, but
- we must be under no illusions that we need to
- stay at this level, or better, if we are to achieve our

[Sources: EcoAct media release 25/10/2021; Full text report: The Climate Reporting and Performance of the DOW 30,EURO STOXX 50and FTSE 10]

Shareholder Activism

Shareholder ESG resolutions receive less than 10% support at Whitehaven

The Whitehaven AGM was held on 27 October 2021.

Shareholder ESG resolutions

- Neither of the two shareholder ESG resolutions filed by Market Forces had board support, and neither was carried.
- The special resolution to amend the constitution to enable shareholders to bring advisory resolutions received 1.56% support.
- As this resolution failed to be carried, the ordinary resolution calling on the company to disclose details of how its capital expenditure will facilitate the wind down its coal operations/assets consistent with a net zero emissions by 2050 scenario (capital protection resolution) was not formally put to the meeting.
- Ahead of the meeting 9.4% of shareholders voted in support of the resolution (90.1% against).
- In a statement, Market Forces welcomed this result noting that the level of support was more than double the level a similar resolution received last year. Market Forces also expressed disappointment that large institutional investors did not back the resolution. The statement comments: 'while the vote is significant, there will be many large investors with their own commitments to net zero that have failed to support this resolution. Failure to align proxy voting with climate commitments is an indictment on those investors, and calls into question the credibility of their climate action claims'.

Remuneration report

- The resolution to approve the remuneration report was not carried with 53.49% of shareholders voting against. This constitutes a first 'strike'.
- The resolution approve the grant of long term incentives to the Managing Director received strong support (93.97% of votes in support)

Director elections

The two directors standing for re-election were re-elected with receiving 92.87% and 94.99% 'for' votes respectively.

[Sources: Whitehaven results of AGM 2021; Chair's Address to the meeting; Market Forces media release 27/10/2021]

Regulators

APRA Chair says the regulator must balance focus on immediate risks with the need to ensure it is 'prepared for those of tomorrow'

- In his opening statement to the Senate Economics Committee Australian Prudential Regulation Authority (APRA) Chair Wayne Byres provided an overview of the regulator's Corporate Plan for 2021-2025. Mr Byres said that ensuring that Australia's financial system remains financially and operationally resilient required ongoing vigilance and remains APRA's 'core job'.
- Mr Byres said that as a 'forward looking prudential supervisor' the regulator needs to not only address current challenges but also to ensure that it is 'prepared for those of tomorrow' by taking into account the 'changing shape of the Australian financial system'.
- This requires APRA to take into account and be 'alert and responsive' to various changes in the financial system. These include: 'business and activity that is increasingly occurring outside the regulatory perimeter, and also helping to find solutions to increasingly important challenges, such as superannuation retirement income outcomes; the availability and accessibility of insurance for Australians and the financial risks associated with climate change'.
- APRA's aims to deliver three key outcomes: 1) 'ensuring resilient and prudently managed financial institutions'; 2) 'promoting financial system stability'; and 3) 'contributing to the community's ability to achieve good financial outcomes'.
- Mr Byres then provided a brief update on three 'notable activities' since the regulator last appeared before the committee: 1) addressing risks in lending for housing; 2) APRA Connect.
- Addressing risks in lending for housing: Mr Byres explained the rationale behind APRA's decision in August to increase the minimum interest rate buffer banks are expected to use when assessing the serviceability of home loan applications from 2.5 percentage points to 3 percentage points. Mr Byres described the decision as a

'targeted and judicious action that will help to reinforce the stability of the financial system in an environment of extremely low interest rates and rapidly rising house prices'. Mr Byres opined that it is as yet 'too early to say precisely what impact' the change may have on lending activity but that APRA expects that the change will have a 'larger impact on investors' than on other borrowers. Mr Byres emphasised that 'APRA is not seeking to target the level of housing prices. Rather, APRA's objective is to ensure that mortgage lending is conducted on a prudent basis, and that borrowers are well-equipped to service their debts under a range of scenarios'.

- Driving improved outcomes for superannuation members:
  - Mr Byres described the introduction of an annual performance test (which is part of the Your Future, Your Super reform package) as a 'critical reform' in terms of driving better financial outcomes for fund members. Mr Byres said that following the results of the first MySuper Product Performance Test at the end of August, APRA is 'scrutinising' the actions of the trustees of the 13 products that failed to meet the 'prescribed benchmark'. Mr Byres said that each trustee has been asked to provide a report identifying the causes of underperformance and their proposed plan of action. These trustees are also required to report important information to APRA such as weekly information relating to the movement of members and the outflow of funds. Mr Byres commented that 'unsurprisingly, all funds have been losing members since the test results were published'. Mr Byres also highlighted the introduction of the 'best financial interests duty and the associated reverse onus of proof' as a key reform.
  - Mr Byres also highlighted the introduction of the best financial interests duty, and the associated reverse onus of proof, as key reforms that will 'require trustees to change the way in which they manage their expenditure such that they can demonstrably provide evidence that it is in the best financial interests of their members'. Mr Byres observed that this was a key issue highlighted by the findings of APRA's thematic review into fund expenditure. Mr Byres commented:

    > 'APRA observed many trustees failed to rigorously measure and assess anticipated and achieved benefits for members of expenditure on marketing campaigns and related activities. Broadly speaking, there was too much reliance on qualitative judgement, and insufficient quantitative analysis. In APRA's view, a number of the practices observed would not pass the new legislative standard set by the Your Future, Your Super reforms. Notably, in a number of instances where APRA identified an absence of robust analysis, the expenditure has ceased or not been repeated since the new law was introduced. Where certain expenditures have continued beyond 1 July this year, APRA has challenged trustees to demonstrate how they comply with the new law. Once their responses have been assessed, APRA will consider what, if any, further action is necessary'.

- APRA Connect: Mr Byres commented briefly on APRA's new data collection solution, APRA Connect, which went live in September. Mr Byres described APRA Connect as a 'critical enabler in APRA's Superannuation Data Transformation project, allowing APRA to collect much more detailed information from the superannuation sector and hence more effectively scrutinise its performance'. Mr Byres added that the APRA Connect is also expected to reduce regulatory burden both because it provides a 'more seamless reporting process for industry' and because a design principle behind the system has been: 'collect once, use many times'.

- Mr Byres closed his opening remarks by stating that despite the fact that 2020/21 was a challenging year, the Australian financial system remains financially and operationally resilient and that this enabled regulated entities to 'play important roles supporting the broader Australian community through an extremely difficult time'.

[Source: APRA Chair Wayne Byres Opening Statement to the Senate Economics Legislation Committee 28/10/2021]

Financial Services

Top Story | Financial Accountability Regime Status update: FAR Bill introduced

Key Takeouts

- The Financial Accountability Regime Bill 2021 and the Financial Sector Reform (Hayne Royal Commission Response No 3) Bill 2021 will, if legislatedestablish the Financial Accountability Regime (FAR).
- What is the FAR? The FAR would replace and expand on the existing Banking Executive Accountability Regime or BEAR. Broadly, the FAR would extend strengthened, but BEAR-like accountability requirements to other APRA-regulated entities and to the directors/senior executives of those entities in accordance with the government's response to several Hayne Commission recommendations. The aim of the FAR is ultimately to strengthen and increase individual and entity level accountability across the financial services sector, including for non-financial conduct risk.
- Planned commencement date: The planned timing of the reforms is unchanged from the timeline put forward in the July-August consultation. This means that if legislated in its current form, the FAR regime will apply to:
  - authorised deposit-taking institutions (ADIs) and their authorised non-operating holding companies (NOHCs) from the later of 1 July 2022 or six months after commencement of the legislation; and
  - insurers (and their registered or authorised NOHCs) and registrable superannuation entity (RSE) licensees from the later of 1 July 2023 or 18 months after the commencement of the legislation.
- Similar (but not the same) as the BEAR? Though the structure of the FAR is very similar to the BEAR, the FAR is proposed to differ in a number of key respects including that:
  - the regime will be jointly administered by the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) (although there is some division of responsibilities);
  - smaller entities will be exempt from requirements to provide accountability statements/maps to the regulators (though not from the accountability mapping exercise itself);
  - all FAR entities will be subject to the same deferred remuneration obligations, regardless of size or seniority of accountable person role; and
  - accountable persons will be subject to an additional accountability obligation (ie not included in existing BEAR obligations) in relation to preventing matters from arising that may result in the entity's material contravention of specified financial services laws.
- Civil penalties: The Bill would also introduce potential civil penalties for certain types of involvement in a FAR contravention by 'a person other than a body corporate' (eg accountable persons) (see: (s83(3)) - a key departure from the July-August consultation draft.
- Some details are yet to be finalised: Also consistent with earlier consultations, some details of the regime (eg the definitive list of 'prescribed responsibilities' or positions of accountable persons, the threshold for determining which accountable entities fall into the 'enhanced compliance' category and regulatory guidance around the joint administration of the regime and regulatory expectations) are not yet clear because they have yet to be released.

Overview: The proposed new Financial Accountability Regime (FAR)

Following the release of a proposal paper in January 2020 (summarised) and consultation on draft legislation (summarised) in July-August 2021, the Financial Accountability Regime Bill 2021 (Bill) and the Financial Sector Reform (Hayne Royal Commission Response No 3) Bill 2021 were introduced into the House of Representatives on 28 October 2021.

In broad terms, the approach to establishing the Financial Accountability Regime (FAR) in the Bill is largely consistent with the approach contemplated in earlier consultations with some exceptions. A high level overview and discussion of the key measures is below.

What is the FAR?

If legislated, the FAR (which will replace the existing BEAR) proposes to extend strengthened, but broadly BEAR-like, accountability requirements to other APRA-regulated entities and to the directors/senior executives of those entities. This is in accordance with the government's response to several Hayne Commission recommendations.

Importantly, unlike the existing BEAR, the FAR will be administered jointly by APRA and ASIC.

Why is the FAR being introduced?

The FAR will implement the government's response to the following Hayne recommendations.

- Recommendation 3.9 – the BEAR be extended to all RSE licensees
- Recommendation 4.12 – the BEAR be extended to all APRA regulated insurers
- Recommendation 6.6 – ASIC and APRA jointly administer the BEAR
- Recommendation 6.7 – the obligations be amended to make clear that an ADI and accountable persons must deal with APRA and ASIC in an open, constructive and co-operative way
- Recommendation 6.8 – the BEAR be extended to all APRA-regulated financial services institutions and that APRA and ASIC should jointly administer those new provisions.

The explanatory memorandum makes clear that the new individual and firm-level accountability framework that will be introduced by the FAR is intended to lift the standard of risk and governance culture across the financial sector, consistent with the spirit of the Hayne recommendations.

The explanatory memorandum states:

> 'A key objective of the Financial Accountability Regime is to improve the operating culture of entities in the banking, insurance and superannuation industries and to increase transparency and accountability across these industries—both in relation to prudential matters and conduct related matters'.

Implementation of Recommendation 1.17 (end-to-end product responsibility)?

The consultation policy paper accompanying the July-August 2021 FAR consultation (consultation policy paper), indicated that individual end-to-end product responsibility would be 'subsumed' into the FAR by including it in the list of 'prescribed responsibilities and positions' for accountable persons, to be set by the Minister in 'rules'. This would implement the government's response to Hayne Recommendation 1.17.

However, it is not clear whether this remains the government's intention.

As yet, the Minister's rules have not yet been released.

The Treasurer's 28 October 2021 announcement listed the Hayne Recommendations which the government considers that the Bill responds to.

No reference was made to implementation of Recommendation 1.17.

Who will the FAR apply to?

Accountable entities

If legislated, the FAR would impose accountability obligations on 'accountable entities', ie:

- ADIs and their authorised NOHCs
- general insurers and their authorised NOHCs
- life insurers and their registered NOHCs
- private health insurers
- RSE licensees

These obligations would also apply to foreign accountable entities (in the banking or insurance sectors) but only to the operations of their Australian branch (s15(2)(b) of the Bill).

While the FAR will not impose direct legal obligations on the 'significant related entities' of accountable entities, accountable entities will be required under the new regime to take 'reasonable steps' to ensure that their 'significant related entities' comply with certain FAR obligations. A 'significant related entity' of an accountable entity other than an RSE licensee is defined differently to a 'significant related entity' of an RSE licensee.

Accountable persons

The board and certain senior executives within accountable entities, referred to in the Bill as 'accountable persons', will also be directly regulated by the FAR and face potential sanctions for non-compliance with their FAR obligations.

Accountable entities will need to determine who within their organisation is an 'accountable person' by reference to the considerations in s10 of the Bill. Namely:

- whether the person holds a position (either within the accountable entity or within a significant related entity) that has 'actual or effective senior executive responsibility' for either: a) the 'management or control of the accountable entity'; or b) 'a significant or substantial part or aspect of the operations of the accountable entity or the accountable entity or the accountable entity's relevant group'; or
- whether the person holds one (or more) of the prescribed responsibilities or positions listed in 'rules' to be made by the Minister.

As yet, the Minister's rules have not been released. Attachment A at p6 of consultation policy paper, set out a full list of proposed prescribed responsibilities and positions. There has been no more recent update on the government's intentions.

Application to a much broader range of functions within FAR entities?

Consistent with the approach proposed in the July-August consultation, the explanatory memorandum for the current Bill indicates that, in practice, the FAR is intended to apply to a fairly limited group – ie. to 'typically include the directors and senior executives of an entity, such as the Chief Executive Officer and officers reporting directly to the Chief Executive Officer' rather than to lower level executives.

However, the indicative list of prescribed responsibilities and positions included in the consultation policy paper (which may not be indicative of the final approach) is still much broader than under the BEAR.

The proposed FAR accountability framework

Similar to the BEAR, the FAR will impose:

- accountability obligations;
- key personnel obligations;
- notification obligations; and
- deferred remuneration obligations on APRA-regulated entities.

Accountability obligations

Accountable entities

Similar to the BEAR, and consistent the approach in previous consultations, the FAR will require (s20 of the Bill) accountable entities to take reasonable steps to:

- conduct their business with honesty and integrity, and with due skill, care and diligence;
- deal with APRA and ASIC in an 'open, constructive and cooperative way';
- in conducting its business, prevent matters from arising that would (or would be likely to) adversely affect the entity's prudential standing or reputation; and
- ensure all accountable persons and each of the entity's significant related entities meet their accountability obligations under the FAR.

Accountable persons

Similarly, accountable persons will be required to: a) act with honesty and integrity, and with due skill, care and diligence; b) deal with APRA and ASIC in an open, constructive and cooperative way; and c) take reasonable steps in conducting their responsibilities to prevent matters from arising that would (or would be likely to) adversely affect the entity's prudential standing or reputation.

New obligation: In addition to these obligations, the FAR would introduce a new obligation (ie not included in existing BEAR obligations) requiring accountable persons to take reasonable steps in conducting their responsibilities as an accountable person to prevent matters from arising that would (or would be likely to) result in the entity's material contravention of specified laws governing the entity (see: s21(d) of the Bill).

Reasonable steps

Section 22 of the Bill sets out a non-exhaustive list of what may constitute reasonable steps in meeting this and the other relevant accountability obligations listed above, being the following (the last one of which is an addition to the equivalent list in the BEAR legislation):

- having appropriate governance, control and risk management
- having safeguards against inappropriate delegations of responsibility
- having appropriate procedures for identifying and remediating problems that arise or may arise
- taking appropriate action in response to non compliance, or suspected non compliance

Interestingly, 'taking appropriate action to ensure compliance', which was included in the draft Bill as an additional example of 'reasonable steps', does not appear in the Bill.

Key personnel obligations

If legislated, accountable entities will be required to ensure that:

- the responsibilities of their accountable persons (ie. the accountable persons of the accountable entity and its significant related entities) cover all aspects of their business;
- every accountable person is registered with the regulators before occupying an accountable person role (with certain exceptions, eg. where the person holds the position for 90 days or less)
- accountable person applicants have not been disqualified by the regulators from holding an accountable person position.

Register and registration process

An information paper included as part of the July-August consultation suggested, that to streamline this process, registration of accountable persons will occur through a single portal. This portal would also function as a single point of contact for FAR-related requests, queries and data collection more generally, on an ongoing basis. Information submitted by accountable entities through the single portal would be made available to both APRA and ASIC, removing the need for entities to submit the same information to each regulator separately.

We are not aware of any more recent update on whether this remains the government's intention.

Under the Bill before Parliament, the regulators may make any of the information contained on the register public on the internet (s.40(5)). In addition to the information that the draft Bill contemplated would be required for registration, the Bill requires that the register contain details of the responsibilities that cause a person to be an accountable person of the relevant entity (s.40(4)(f)).

Registration of accountable persons – no veto power over new appointments

As recommended by the APRA Capability Review, the original proposal document released in January 2020 proposed to give APRA a new (reserve) 'veto' power over the appointment/reappointment of directors and senior executives 'where APRA holds existing relevant information regarding a particular person that conflicts with the obligations that would be placed on him or her as an accountable person'.

This was not included in the draft Bill consulted on in July-August and has not been included in the Bill now before parliament.

Section 41 of the Bill makes clear that provided that the registration application meets certain requirements – that: a) the application is complete (ie contains all the information required) and submitted in the approved form to the regulators; b) includes a signed declaration that the accountable entity is satisfied the person is suitable to be an accountable person; c) is accompanied by an accountability statement for the person (where required); and d) is supplemented by any further information requested by the regulators in relation to the application - the person is required to be registered within 21 dates of the regulators receiving their application.

Where further information has been requested, the regulators will register the person 21 days after it is provided to the regulators.

Deferred remuneration obligations

Broadly, the FAR will require all accountable entities and their significant related entities to defer at least 40% of the variable remuneration for each of their accountable persons for a minimum of four years (except in limited circumstances), if the amount that would be deferred is AU$50,000 or more (or another amount if prescribed in the Minister's rules).

Variable remuneration means so much of a person's total remuneration (including cash and equity based remuneration) that is conditional on the achievement of objectives, such as performance metrics and service requirements according to the explanatory memorandum.

There would be no requirement to defer variable remuneration if variable remuneration is not a feature of a particular accountable person's remuneration structure (eg, if the accountable person receives only fixed pay (eg, salary and superannuation).

Four year deferral requirement

The explanatory memorandum states that the four year deferral requirement is 'intended to be consistent with provisions of APRA's prudential standard to regulate remuneration in regulated industries (Prudential Standard CPS 511 Remuneration), that also requires deferral of variable remuneration for an overlapping class of persons in those industries. This approach will provide for consistent compliance requirements under the two frameworks'.

Interestingly, APRA's prudential standard CPS 511 Remuneration (summarised) requires a higher deferral of 60% of the CEO's total variable remuneration for CEOs of significant financial institutions (as defined). APRA has indicated [CPG 511 Remuneration] that entities are expected to comply with both FAR and CPS 511.

Requirement to reduce variable remuneration

Under s25 of the Bill, accountable entities will also need to ensure their remuneration policy 'requires' a reduction in the variable remuneration of accountable persons who fail to comply with their accountability obligations.

The reduction must be proportionate to the failure (potentially to zero) and need not be limited to variable remuneration relating to a period in which the failure occurred.

Accountable entities will also be required to take reasonable steps to ensure that their significant related entities comply with these obligations. The deferred remuneration obligations will not apply to an accountable person:

- while the person is filling a 'temporary or an unforeseen vacancy' (provided the person is not registered as an accountable person), for the first 90 days that they fill the position (s30 of the Bill); or
- whose deferred variable remuneration for the financial year does not meet a minimum $50,000 threshold (unless the Minister makes specifies a different amount) (s29 of the Bill)
- Notification obligations
- If legislated, entities will not be classified as small, medium and large (as is the case under the BEAR) but instead split into two categories: 'core compliance entities' (which will not be required to submit accountability maps/statements to the regulators) and 'enhanced compliance entities' (which will have to do so).

Core compliance entities

All accountable entities will be required to provide the regulators with certain 'core' information about the entity and its accountable persons (set out in s31(1)(a) and s32 of the Bill). This information includes notifying the regulators if certain events or compliance failures occur, using an approved form, generally within 30 days of the event occurring.

Notification requirements will be triggered where:

- a person ceases to be an accountable person
- an accountable person of the accountable entity (or of a significant related entity) is dismissed or suspended because the person has breached their accountability obligations under s21
- a reduction is applied to the variable remuneration of an accountable person of the entity (or of a significant related entity) because the person failed to comply with one or more of the person's accountability obligations under s21
- a 'material change' occurs to information included on the register of accountable persons about an accountable person
- the accountable entity has reasonable grounds to believe that:
- 'the accountable entity has failed to comply with one or more of its accountability obligations under section 20 or of its key personnel obligations under section 23; or

- an accountable person of the accountable entity, or of a significant related entity of the accountable entity, has failed to comply with one or more of the person's accountability obligations under section 21'.

Accountable entities will also be required to take reasonable steps to ensure that each of its significant related entities comply.

Enhanced compliance entities

Entities that meet an 'enhanced notification threshold' will be required also to provide accountability statements and accountability maps to the regulators and to notify the regulators of material changes to these documents.

The threshold to determine which accountable entities will need to comply with the enhanced notification requirements will be specified in rules to be set by the Minister (which have not yet been released).

A 'Questions and Answers' document released as part of the July-August consultation on the draft Bill (consistent with the original proposal) suggested that the enhanced notification requirements may apply to the following entities:

- ADIs with total assets > $10b
- RSE licensees with total assets > $10b (ie combined total assets of all RSEs under the trusteeship of a given RSE licensee.)
- General and private health insurers with total assets > $2b
- Life insurers with total assets > $4b

We are not aware of any more recent update on whether this remains the government's intention.

NOHCs?

The same Question and Answers document also suggested that where an accountable entity within a corporate group meets the enhanced notification threshold, 'all other accountable entities within that corporation group including any licensed NOHCs would need to comply with the enhanced notification obligations irrespective of whether they meet the enhanced notification threshold'.

Again, we are unaware of any more recent update on this question.

Compliance mechanisms

The Bill will give the regulators a variety of tools to administer/enforce compliance with FAR obligations. These include (among others):

- the power to direct an accountable entity to take action to address actual or likely non-compliance with FAR obligations
- the power to require accountable entities, significant related entities and accountable persons to provide information or documents to them
- the power to conduct investigations (including examinations) into possible FAR contraventions.
- the power to disqualify a person from being an accountable person for a period
- the power to accept enforceable undertakings
- the power to seek an injunction order from a Court
- the power to seek a Court to impose civil (financial) penalties

Contravention of five provisions of the Bill (s48, s52, s68, s92 and s94) could also potentially incur a criminal penalty.

Civil penalties

Accountable entities

If the Bill is enacted in its current form, an accountable entity that breaches its FAR obligations could incur (under s80-83) a civil (pecuniary) penalty of up to 50,000 penalty units, three times the value of the benefit derived or detriment avoided by the entity, or 10% of the entity's annual turnover up to 2.5 million penalty units for each contravention.

The explanatory memorandum states that:

> 'In practice, it is intended that a court would determine which method provides the greatest penalty, and then use discretion to impose an appropriate penalty up to that amount'.

Accountable persons

The original FAR proposal in 2020 suggested that individual accountable persons might also face civil penalties for contravention of their FAR obligations. This measure was omitted from the draft Bill, but a note within the draft Bill suggested an intention that a person (eg an accountable person) could be liable for ancillary contravention of a FAR obligation of an 'accountable entity' by virtue of the Regulatory Powers Act.

The Bill now before Parliament includes new additions: ss 81(1) and 83(3).

Section 81(1) states that a person must not:

a) 'attempt to contravene a civil penalty provision of this Act; or

b) aid, abet, counsel or procure a contravention of a civil penalty provision of this Act; or

c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision of this Act; or

d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision of this Act; or

e) conspire with others to effect a contravention of a civil penalty provision of this Act.'

A person is liable to a civil penalty if the person contravenes s81(1) (s81(2)).

Section 83(3) of the Bill provides that a breach of s81 by a 'person other than a body corporate' (which according to the explanatory memorandum includes an accountable person), would mean that the person could incur a civil penalty of the greater of either: 5,000 penalty units or 'if the court can determine the benefit derived and detriment avoided because of the contravention — that amount multiplied by 3'.

Auditors and actuaries

The explanatory memorandum flags that the Bill will also extend certain existing obligations on auditors and actuaries to assist with investigations under existing legislation - the Banking Act 1959 (Cth), Insurance Act 1973 (Cth), Life Insurance Act 1995, Private Health Insurance (Prudential Supervision) Act 2015 (Cth), and the Superannuation Industry (Supervision) Act 1993 (Cth) - to include assisting with investigations of potential FAR breaches once the FAR regime takes effect.

Joint administration/enforcement of the FAR

Division of responsibilities

- If legislated in its current form, ASIC will be limited to administering or enforcing the FAR in relation to accountable entities that hold an Australian financial services licence or an Australian credit licence, their significant related entities, and accountable persons of these entities. Section 36 of the Bill identifies the provisions covered by this limitation. The explanatory memorandum makes clear that this will not prevent ASIC from 'maintaining the register of accountable persons, sharing information and making legislative instruments with APRA in relation to all accountable entities and persons'.
- APRA will enforce and administer the FAR in relation to other entities, their significant related entities and the accountable persons of those entities.
- The regulators will jointly establish and administer the register of accountable persons.

Collaborative approach

The Bill includes a number of measures intended to ensure a 'cohesive' approach on the part of the regulators.

- Section 37 of the Bill requires APRA and ASIC to enter into an arrangement outlining their general approach to administering and enforcing the FAR within six months of the commencement of the Bill, and before exercising certain powers/functions under the Bill. If the regulators fail to reach an agreement, the Minister may determine an arrangement for this purpose.
- Section 38 of the Bill specifies a number of situations requiring the regulators to form an agreement prior to making certain decisions or exercising certain powers eg the decision to disqualify an accountable person.
- The explanatory memorandum states that ASIC and APRA are 'required to share certain information necessary to enable the joint administration of the regime'. Section 39 of the Bill states that APRA and ASIC may share information that is obtained, produced, or disclosed for the purposes of FAR. APRA and ASIC are also required to share certain information necessary to enable the joint administration and enforcement of the regime.

Proposed timing and plan for implementation of the FAR

If legislated in its current form:

- the FAR will apply to ADIs and their authorised NOHCs from the later of 1 July 2022 or six months after commencement of the legislation. At this point, the BEAR would be repealed.
- the FAR will commence for insurers, their licensed NOHCs and RSE licensees from the later of 1 July 2023 or 18 months after the commencement of the FAR.

Preparing for the FAR

Given that the introduction of the FAR has been anticipated for some time, many financial services firms have already taken steps to review their existing governance structure and frameworks in anticipation.

In light of the detail now available, and in light of the impact that the COVID-19 pandemic has had on working arrangements and the flow-on effects for supervision and oversight, entities may wish to revisit these reviews, as part of their broader FAR planning processes.

Accountable entities should expect to engage with the regulators

The information paper included as part of the July-August consultation flagged that the regulators would engage with accountable entities ahead of formal implementation of the regime to support them in their preparations. In particular, it was suggested that in addition to taking the opportunity to 'properly examine and strengthen existing governance frameworks where appropriate' accountable entities should be prepared to engage with the regulators on the following issues:

- for ADIs, the regulators may seek to understand how they intend to transition from the BEAR to the FAR including how they intend to meet their new and expanded obligations;
- for 'enhanced compliance entities' the regulators will request draft accountability maps and statements to be provided for review and comment as part of the pre-implementation process; and
- for 'core compliance entities' the regulators will request information about their preparations eg a draft list of accountable persons.

Broader implications: A new minimum governance standard across the financial services sector?

In the time that has elapsed since the Hayne Commission and following the release of the initial FAR proposal in January 2020, and the consultation on the draft Bill in July 2021, stakeholder expectations around executive accountability for non-financial risk (including accountability for cultural failings) have risen dramatically in Australia and internationally. The new accountability framework that will be introduced by the FAR is arguably very much in alignment with these increased expectations.

Over time, we expect that the FAR is likely represent a new minimum standard for boards and senior management across the economy.

Top Story | Status update: Tracking progress against each of the Hayne Commission's 76 recommendations

The Financial Services Royal Commission's final report was publicly released on 4 February 2019. In the two (plus) years since its release a number of actions have been implemented in response – though in many cases, the changes have not yet been fully implemented.

We have prepared a table briefly outlining the actions taken to date and/or the planned actions to be implemented in response to each of the Commission's 76 recommendations.

We will be updating the table regularly.

The table was last updated on 3 November 2021 to reflect developments relating the following recommendations.

- Recommendation 3.9 (extension of the BEAR to all RSE licensees)
- Recommendation 4.12 (extension of the BEAR to APRA-regulated insurers)
- Recommendation 6.6 (APRA and ASIC to jointly administer the BEAR)

- Recommendation 6.7 (requirement for accountable persons to deal with APRA and ASIC in an open/constructive manner)
- Recommendation 6.8 (extension of the BEAR to all-APRA regulated financial services institutions)
- Recommendation 1.17 (end-to-end product responsibility)
- Recommendation 7.1 (compensation scheme of last resort).
- Recommendation 2.10 (new disciplinary system for financial advisers)

You can access the most recent update here

Compensation scheme of last resort: Bills introduced

Key Takeouts

- Following consultation, on 28 October, the government introduced three Bills that if legislated will establish a CSLR and the industry funding framework to support it, in line with the government's response to Hayne recommendation 7.1.
- If legislated, the proposed CSLR would fund unpaid 'relevant' determinations made by AFCA that have been made since 1 November 2018 (the date of the commencement of the AFCA scheme) where the determination is in relation to a financial product or service within the scope of the scheme and where the application meets certain eligibility requirements.
- Products/services proposed to be within scope of the scheme: Under s 1065 of the Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill (FAR Bill) a 'relevant AFCA determination' must relate to one or more of the following: a) engaging in credit activity (within the meaning of the National Consumer Credit Protection Act 2009 (Cth)); b) providing personal advice on one or more relevant financial products to retail clients; and c) dealing in securities for a person as a retail client (other than issuing securities)
- Funding
  - It's proposed that the first year of the scheme would be funded by the Commonwealth.
  - It's also proposed that Australia’s ten largest banking and insurance groups (excluding health insurers and superannuation groups) would pay a one-off levy to fund what the explanatory memorandum describes as a 'backlog of accumulated unpaid claims (and associated AFCA unpaid fees) relating to complaints given to AFCA between 1 November 2018' to 28 October 2021.
  - Following this, the CSLR scheme is proposed to be funded through a system of industry levies.

Overview

A legislative package to establish a compensation scheme of last resort (CSLR) and industry funding mechanism to fund the scheme, in line with the government's response to Hayne Recommendation 7.1 was introduced in the House of Representatives on 28 October 2021.

Broadly:

- Schedule 3 of the Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill (FAR Bill) proposes to amend the Corporations Act 2001 (Cth) and other Commonwealth Acts to establish a CSLR. The Bill sets out the proposed scope, operation, administration and oversight of the scheme.
- The Financial Services Compensation Scheme of Last Resort Levy Bill 2021 and the Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2021 propose to implement the industry levy framework to fund the scheme.

If legislated as currently drafted, the measures in all three Bills to establish the CSLR scheme and the supporting levy framework are proposed to commence on the later of 1 January 2022 and the day after the Financial Services Compensation Scheme of Last Resort Levy Bill 2021 receives Assent.

That is, if the measures in the Financial Services Compensation Scheme of Last Resort Levy Bill 2021 do not commence, then the measures in the other Bills and the scheme itself will not commence.

The government expects that that the CSLR operator will be able to begin to make compensation payments under the scheme from 1 July 2022 (assuming the passage of the legislation as currently drafted).

Snapshot of the proposed CSLR

What is the CSLR?

The proposed compensation scheme of last resort (CSLR) is intended to provide a mechanism for consumers who have received a determination for compensation from the Australian Financial Complaints Authority (AFCA) in their favour (and that is in scope of the CSLR), but who have not received payment from the financial services firm in accordance with the determination, to be able to apply for compensation up to a capped amount.

As compensation under the CSLR is intended to be a 'last resort', compensation would only be payable to eligible consumers after AFCA has taken steps to require the financial services firm to pay the consumer the amount owed under the AFCA determination.

It's proposed that the CSLR will fund eligible unpaid determinations made by AFCA that have been made since 1 November 2018 (the date of the commencement of the AFCA scheme).

The proposed reforms include measures to implement a system of industry levies to fund the scheme.

Proposed key features

- Broadly, if legislated in its current form, the CSLR would create a pool of funds from which compensation up to a maximum cap of $150,000 may be paid to eligible claimants upon application to the CSLR operator. That is, it's proposed that eligible claimants would be able to apply to the operator of the scheme to receive the compensation (up to the capped amount) that they would have received, had the financial services firm paid it to them in accordance with AFCA's determination.
- The Minister would authorise a CSLR operator to administer the scheme. This CSLR operator would be a not-for-profit company limited by guarantee that meets certain other mandatory requirements set out in Section 1062 of the FAR Bill. It's proposed that the CSLR operator would be regulated by the Australian Securities and Investment Commission (ASIC).
- Under the measures in FAR Bill, the CSLR operator's decision to award or deny a claim would be based on whether the application meets certain eligibility criteria under the scheme (discussed in more detail below). That is, it's proposed that the CSLR operator would not have the ability to reassess the merits of the AFCA determination, (including the amount compensation awarded) that is the subject of a CSLR application.
- To avoid a circumstance arising where a consumer would receive payment via the CSLR as well as another remedy (eg through a liquidation process) and to allow the CSLR operator to pursue the unpaid compensation owed to the consumer under the AFCA determination, it's proposed that the CSLR operator would have a right of subrogation.

Eligibility to receive compensation under the CSLR

Under the measures in the FAR Bill, not all unpaid AFCA determinations would fall within the scope of the CSLR. In order to be eligible to receive compensation under the scheme, applicants would need to have: a) received a 'relevant AFCA determination' as set out in s1065 of the FAR Bill and b) meet the eligibility requirements set out in s1064 of the FAR Bill.

Relevant AFCA determination

Broadly, section 1065 of the FAR Bill provides that to be a 'relevant AFCA determination' the determination must relate to a complaint by a person against an AFCA member (who was a member of AFCA at the time the complaint was made) in relation to one or more of the following:

- engaging in credit activity (within the meaning of the National Consumer Credit Protection Act 2009 (Cth)) as a credit provider or other than as a credit provider
- providing financial product advice that is personal advice provided to a person as a retail client about one or more products that include at least one relevant financial product;
- dealing in securities for a person as a retail client, other than issuing securities.

Eligibility criteria

Section 1064 of the FAR Bill sets out the proposed eligibility criteria for applications for compensation for relevant determinations under the scheme. Broadly, a consumer would be eligible to receive compensation under the CSLR if:

- a 'relevant AFCA determination' requires an amount to be paid to the consumer and has not been paid
- the consumer has notified AFCA that the amount has not been paid within 12 months after the day the determination was made ('or such longer period as AFCA agrees with the person')
- AFCA has finished taking appropriate steps to require the amount to be paid
- the consumer is not eligible to receive payment under another statutory scheme
- the CSLR operator holds a reasonable belief that 'having regard to the AFCA member's financial position' the AFCA member is 'unlikely to fully pay the amount' owed under the determination.

The decision to make a compensation payment under the scheme

Broadly, the CSLR operator would be required to make a compensation payment to a consumer if:

- a relevant AFCA determination has been made in favour of the consumer and the consumer is eligible for compensation (as described above)
- the consumer makes an application under the CSLR operator and
- the consumer has accepted the offer of compensation made by the CSLR operator.

It is not proposed that the CSLR operator will have the ability to reassess the merits of the AFCA determination, that is the subject of a CSLR application.

Consequences of failure to compensate consumers

Section 1069F of the FAR Bill would require the CSLR operator to notify ASIC when it makes a payment under the CSLR of the details of the financial firm that was the subject of the relevant AFCA determination and details of its failure to pay the determined amount to the consumer.

It's proposed that ASIC would then be required to cancel the Australian financial services licence (AFSL) or Australian credit licence (ACL) held by the relevant person, body corporate, partnership, or trustee (s915B of the FAR Bill).

ASIC would also be able to make a banning orders preventing a body corporate, partner, or trustee from holding an ACL or AFSL.

Proposed approach to funding

- It's proposed that the scheme (including the administrative costs associated with running the scheme) would be funded by industry.
- The CSLR operator would have responsibility for calculating the levies due for each period (using the method to be specified in Regulations).
- ASIC would have responsibility for issuing levy notices, granting extensions of time to pay the levy and enforcing compliance. It's proposed that late penalties would apply if payments were not made within the specified timeframe.

First year of the scheme

It's proposed that:

- The Commonwealth would fund the first year costs of establishing and running the scheme.
- Australia's ten largest banking and insurance groups (excluding health insurers and superannuation groups) will also pay a one-off levy to fund what the explanatory memorandum describes as a 'backlog of accumulated unpaid claims (and associated AFCA unpaid fees) relating to complaints given to AFCA between 1 November 2018' to 28 October 2021.
- Following this, the scheme is proposed to be funded through a system of annual (and, if required) secondary industry levies.

Ongoing funding of the scheme

From the second year of the scheme, the CSLR would be funded through:

- annual levies (which will be the primary funding mechanism);
- secondary levies (if required).

Annual levy

- Broadly, the proposed annual levies would cover: a) the compensation amounts that the CSLR operator estimates will be payable to applicants under scheme; b) certain unpaid AFCA fees; c) the CSLR operator and ASIC's administrative costs (associated with the CSLR); and d) amounts to build and maintain a capital reserve.
- Annual levies are proposed to be payable by the members of a sub-sector within the meaning of the levy framework established by the ASIC Supervisory Cost Recovery Levy Act 2017.
- The total amount of annual levy payable would be determined by the CSLR operator in a legislative instrument. This amount would be subject to maximum caps.
  - The proposed cap for the CSLR scheme overall (ie the total amount that can be levied in a levy period on all persons across all subsectors) is $250 million.
  - The proposed cap for each sub-sector is $10 million (but may be increased through regulations and/or exceeded where a Ministerial determination is made).
- Amounts payable by individual firms in a sub-sector would be worked out in accordance with a method to be prescribed in the regulations (which have not yet been released). The explanatory memorandum states that the method will draw on 'concepts in place for the similar calculations for ASIC supervisory cost recovery levy framework'.
- It's proposed that the CSLR operator could increase the annual levy payable by a subsector if the initial estimate was determined to be insufficient/likely to be insufficient, provided that the increase did not exceed the cap for the subsector for the levy period. Where increasing the levy would exceed the cap the CSLR operator would be required to notify the Minister.

Secondary Levies

It's proposed that where increasing the annual levy on a particular subsector would exceed the cap for the subsector for the levy period, the CSLR operator would be required to notify the Minister.

The Minister would then have the option of making a determination to:

- impose a special levy to meet the estimated shortfall for one or more levy periods;
- require the CSLR operator to make compensation payments in specified instalments over a specified period of time.

However, there would be no requirement for the Minister to exercise either/both of these options.

[Sources: Financial Sector Reform (Hayne Royal Commission Response No. 3) Bill, Financial Services Compensation Scheme of Last Resort Levy Bill 2021, Compensation Scheme of Last Resort Levy (Collection) Bill 2021]

In Brief | Hayne implementation: The Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021 received Assent on 28 October 2021. Among other things, the legislation introduces a new requirement for all financial advisers who provide personal advice to retail clients about relevant financial products to be registered by 1 January 2023. ASIC has indicated it intends to provide guidance on these new registration requirements 'later in the year'

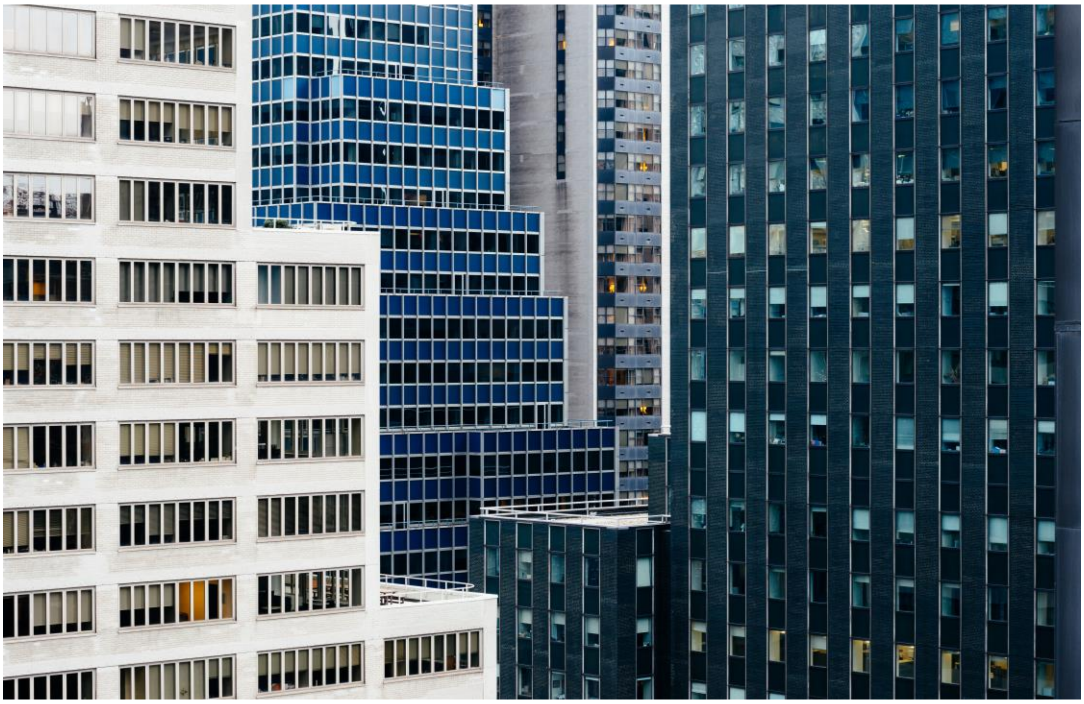
[Sources: The Financial Sector Reform (Hayne Royal Commission Response—Better Advice) Bill 2021; ASIC media release 02/11/2021]

In Brief | Point of sale credit and responsible lending protections: A first of its kind, Melbourne University study has been released assessing the impact of the point of sale credit exemption on vulnerable consumers. Ultimately, the authors argue strongly against the government's proposed repeal of responsible lending laws on the basis that it would increase the risk of harm to vulnerable consumers. The article also calls on the government to 'honour its commitment' to abolish the point of sale exemption in line with Hayne recommendation 1.7

[Sources: Oxford law school Blog 29/10/2021; Full text article: One-Stop Shop: Consumer Credit Issued at the Point of Sale by Lucinda O'Brien, Ian Ramsay, Paul Ali, Mihika Upadhyaya :: SSRN]

COVID-19: The ABA has released a new Financial Difficulty Guideline for ABA member banks

- The Australian Banking Association (ABA) has announced the release of a revised Financial Difficulty Guideline for ABA member banks.
- The revised guideline is designed to complement the provisions in Part 9 of the 2019 Banking Code: When things go wrong. The guideline has also been drafted to reflect the protections available to retail customers under the National Consumer Credit Protection Act 2009 (NCCP Act).



- The ABA states that the guideline is intended to promote 'good practice' across industry.
- The ABA highlights a that the guideline includes a new initiative – the option to give customers in financial difficulty who are on payment plans the option a 'savings buffer' ie a small amount of funds set aside by the bank to cover unexpected expenses/emergency Bills. The ABA expects that 'by the end of 2023, all banks will consider providing the option of a savings buffer to customers when calculating financial hardship repayment plans'.
- Banks across industry will roll out practices in line with the guidance over the next 12 months (though some banks have already begun to do so)

[Sources: ABA media release 29/10/2021; Revised industry guideline: ABA Industry Guideline: Financial Difficulty]

The government has introduced a Bill that if implemented would scrap the $450 superannuation guarantee eligibility threshold (among other measures)

Treasury Laws Amendment (Enhancing superannuation outcomes for Australians and helping Australian businesses invest) Bill 2021 was introduced into the House of Representatives on 27 October 2021.

The key measures and planned commencement dates (assuming the passage of the legislation in its current form) are summarised briefly in the table below.

KEY MEASURE	PLANNED COMMENCEMENT DATE
▪ Expand the coverage of the Superannuation Guarantee to employees earning salary or wages less than $450 in a calendar month from a single employer (by abolishing the existing $450 threshold for superannuation guarantee eligibility) (Schedule 1). ▪ Announcing this measure, the Treasurer and the Minister for Financial Services Superannuation and the Digital Economy said that it would deliver on a key commitment in the Women's Budget Statement by removing 'a structural discrimination that has been part of the superannuation system since 1992, improve equity in the superannuation system and increase the economic security of women in retirement'. ▪ The Australian Institute of Superannuation Trustees and HESTA have each separately welcomed the measure.	▪ Schedule 1 to the Bill would commence the day after Royal Assent and would apply from 1 July 2022. However if Assent is received after 1 July 2022, then the measures in Schedule 1 would apply 'from the beginning of the next quarter after Royal Assent'.
▪ Raise the limit on the maximum amount of voluntary contributions made over multiple financial years that are eligible to be released under the First Home Super Saver Scheme from $30,000 to $50,000 (Schedule 2).	▪ The changes would apply to requests for the Commissioner to make a First Home Super Saver determination made on/after 1 July 2022
▪ Allow individuals aged 60 or older to 'make downsizer contributions' to their superannuation plan from the proceeds of selling their home (Schedule 3)	▪ The amendments would apply from 1 July 2022.
▪ Amends the Income Tax Assessment Act 1997 (Cth) (ITAA) to apply the work test to individuals aged between 67 to 75 years who claim a deduction for personal superannuation contributions. This will facilitate the repeal of the existing work test that applies to non-concessional and salary sacrifice contributions. ▪ Amends the ITAA 1997 to allow such individuals to make or receive non-concessional superannuation contributions under the bring forward rule (Schedule 4)	▪ The amendments would apply from 1 July 2022.
▪ Amends the ITAA 1997 to allow superannuation trustees to 'choose their preferred method of calculating exempt current pension income when they have member interests in both accumulation and retirement phases for part, but not all, of the income year'. (Schedule 5)	▪ The amendments would commence on the first 1 January, 1 April, 1 July or 1 October to occur after this Bill receives Assent.
▪ Amends the income tax law to extend the temporary full expensing regime by 12 months, until 30 June 2023. ▪ According to a joint statement from the Treasurer and the Minister for Financial Services, Superannuation and the Digital Economy, 'over 99% of businesses employing 11.5 million workers are eligible for this measure'.	▪ The amendments would apply to depreciating assets that are first held, and first used or installed ready for use for a taxable purpose at or after the 2020 budget time.

[Sources: Treasury Laws Amendment (Enhancing superannuation outcomes for Australians and helping Australian businesses invest) Bill 2021; Joint media release: Treasurer Josh Frydenberg and Minister for Financial Services, Superannuation and the Digital Economy Jane Hume media release 28/10/2021]

ASIC has commenced court action against a provider of a small amount credit contracts over (alleged) charging of prohibited credit fees

The Australian Securities and Investments Commission (ASIC) has commenced civil penalty proceedings in the Federal Court against a provider of small amount credit contracts (Ferratum Australia Pty Ltd (Ferratum)).

Broadly, ASIC alleges that between March 2019 and August 2021, Ferratum breached consumer credit protection laws in relation to small amount credit contracts by:

- charging some customers fees not permitted to be charged under section 31A(1) of the National Credit Code (Code).
- miscalculating the fee and as a result, overcharging some consumers, who opted to repay their contracts early
- failing 'to implement any system to ensure, record or monitor the proper calculation of the Early Payout amounts' despite being made aware of the issue previously. ASIC alleges that this amounts to a failure by Ferratum to act 'efficiently, honestly and fairly by ensuring it had an accurate and reliable system to calculate, record and monitor the amounts required to pay out contracts early'.

Details of ASIC's allegations are included in the Concise Statement and Originating Process.

ASIC is seeking:

- each of the declarations in paragraph 3 of the Originating Process with respect to all of the (alleged) breaches of the National Consumer Credit Protection Act 2009 (Cth) (Act) and Code
- an order for the payment of pecuniary penalties in respect of Ferratum's (alleged) contraventions of sections 24(1A)(a) and 24(1A)(b) of the Code and sections 47(1)(a) and/or (f) of the Act
- costs 'and such further or other order as the Court deems fit'.

ASIC Deputy Chair Sarah Court commented:

> 'The credit protection laws are designed to protect consumers who need to access small amount loans. ASIC is concerned that the alleged conduct harmed consumers with low incomes and low bank account balances. These types of practices are especially harmful during the COVID-19 pandemic'.
>
> [Sources: ASIC media release 01/11/2021]

In Brief | ASIC has released two information sheets - Information Sheet 225 Crypto-assets (INFO 225) and Information Sheet 230 Exchange traded products: Admission guidelines (INFO 230) – clarifying how ASIC considers Australian law applies to crypto-asset related investment products and setting out 'good practices' for ensuring compliance with regulatory requirements

> [Source: ASIC media release 29/10/2021; Information Sheet 225 Crypto-assets (INFO 225), Information Sheet 230 Exchange traded products: Admission guidelines (INFO 230)]

Risk Management

Climate Risk

Global director initiative calls on boards to put climate at the heart of their strategy, risk management and disclosure processes

- The Climate Governance Initiative (CGI) aims to support the growth of a global director network to 'mobilise Chairs, non-executive and independent directors through enhancing their skills in climate governance and climate action'. Since it was launched the initiative has over 20 national chapters.
- The primary focus of each Chapter is to promote the implementation of the World Economic Forum Principles for Effective Climate Governance.
- The CGI has released a statement as the COP26 UN Climate Change Conference meets calling for boards to move from 'ambition to action' on climate change.
- The statement warns that, 'Climate change is the single-greatest threat to global systemic financial stability, and its impacts will be felt by all companies. It poses major short, medium and long-term risks, requiring boards to put climate considerations at the heart of their strategy, risk management and disclosure processes.'
- In particular, the statement calls on directors to 'engage with the impacts of climate change, guide long-term plans and translate these into immediate, practical action'.
- The Australian Institute of Company Directors (AICD) hosts the Australian Chapter of the CGI with a working group of Australian advisers.
- AICD CEO and Managing Director, Angus Armour called on boards to lift their governance focus on climate change. Mr Armour said:

  > 'Climate risk is no longer an issue facing select sectors, but a standing item on many board agendas. Climate change is now, and will remain, a critical concern for generations of Australian directors. Boards should be looking at both the risks as well as the opportunities facing their organisations.'

  [Sources: AICD media release 03/11/2021]

30 financial institutions commit to tackling agricultural commodity-driven deforestation

- UN backed Race to Zero campaign has announced that 30 financial institutions with over US$8.7 in assets under management have committed to 'use best efforts' to 'eliminate agricultural commodity-driven deforestation from portfolios by 2025' as a key step toward meeting their net zero commitments as well as 'addressing the growing ESG, market, reputational and litigation-related risks associated with the value chains' of agricultural commodities.
- Importantly, the commitment does not necessarily mean that the financial institutions will cease financing the production of certain commodities (eg palm oil, soy, cattle products and pulp and paper). Rather, financial institutions are expected to continue to finance the production of commodities 'in a way that supports sustainable economic development and the global transition towards sustainable production'.
- Financial institutions will use 'sustained engagement' with companies and/or clients to drive change and ultimately eliminate deforestation risks across supply chains. This will include: a) publicly disclosing risks; b) establishing policies to address agricultural commodity-driven deforestation; c) deepening engagements; d) publicly reporting progress on efforts to tackle agricultural commodity-driven deforestation; e) increasing investment in nature-based solutions.
- Race to Zero states that 'this engagement approach is critical for local communities, ensuring support for sustainable livelihoods as these agricultural commodities transition to sustainable production'.
- However, the group observes that where engagement is unsuccessful and 'risk reduction criteria are not met', redirection of finance from companies and/or clients with material exposure to agricultural commodity driven deforestation impacts may be appropriate'.

  [Source: Race to Zero media release 02/11/2021]

In Brief | Not on track: World Resources Institute report finds the world is not doing enough to limit global temperature increase to 1.5 degrees across any key indicator

[Source: World Resources Institute media release 28/10/2021]

In Brief | UK government has confirmed plans to introduce legislation requiring 1300 of the largest UK registered companies and financial institutions to disclose climate-related financial risks/opportunities in line with the TCFD recommendations from 6 April 2022

[Source: UK Department for Business, Energy and Industrial Strategy media release 29/10/2021]

Privacy, Technology and Cybersecurity

Top Story | Decoding the proposed Online Privacy Code and the Privacy Act Review

MinterEllison has released the first of two planned articles discussing the privacy reforms being proposed in the recently published Privacy Act Review Discussion Paper and the exposure draft of the Privacy Legislation Amendment (Enhancing Online Privacy and Other Measures) Bill 2021 (Online Privacy Bill).

You can find the full text here.

Other Developments

Top Story| Modern Slavery Act – Modern Slavery Amendment Bill 2021 (NSW)

On 14 October 2021, the government introduced the Modern Slavery Amendment Bill 2021 (Bill) in the NSW Legislative Council and had its second reading.

MinterEllison has released an article providing an overview and discussion of the key measures in the Bill and the implications for business.

You can find the full text here.

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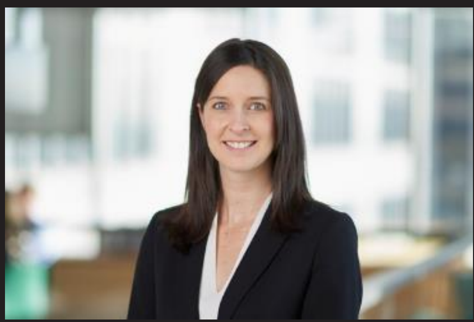

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