



# Governance News

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

**29 September 2021**

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# Boards and Directors

## UK Report calls for regulators to be empowered to hold directors to account for corporate purpose

Following a four year research project into the role of business in society, The British Academy has released its [final report](#). The starting point for the report is that:

'business can and does do more than maximise returns for shareholders...the social responsibility of business should not merely be to increase its profits, but rather: to create profitable solutions for the problems of people and planet, while not profiting from creating problems for either'.

The report assesses the extent to which existing settings enable and encourage companies to operate on this basis.

The headline finding is that though existing legal settings enable businesses to operate on this basis, 'few companies take up the option that exists within the law to adopt purposes beyond promoting shareholder interests, and there is insufficient appreciation and enforcement of directors' duties under the law'.

The report attributes this to both 'insufficient accountability for, and implementation of, purposeful business'. Purposeful business is defined in the report as 'a system in which the purpose of business is creating profitable solutions for problems of people and planet, and not profiting from creating problems'.

To address these deficiencies in accountability and implementation of 'purpose', the report puts forward several recommendations for reform. Key recommendations include both amending s172 and expanding the powers of regulators to strengthen accountability.

### Changes to existing s172?

- The report states that under existing settings directors are required to promote the interests of shareholders and those of stakeholders only to the extent that stakeholder interests enhance long-term shareholder value. The report argues that this unnecessarily 'subordinates the interests of most stakeholders to those of shareholders' when it is possible and preferable in the writers' view, for businesses to promote the interests of both groups.
- To address this issue, the report recommends that governments should 'put purpose at the heart of company law and the fiduciary responsibility of directors'. This, it's argued, would shift the focus away from balancing shareholder vs stakeholder interests to purpose instead. This, the writers consider is desirable because the focus would then be on 'solving problems' which is in the interests of all stakeholders. It's suggested that this could take the form of an amendment to s172 of the Companies Act 2006 (UK) to require companies to state their purpose in their articles of association (as proposed in the [Better Business Act](#) proposed by B Lab UK)
- As an interim measure, it's suggested that government issue guidance on how businesses can incorporate purpose under existing regulatory settings. This could take the form of releasing model articles and/or updating existing explanatory guidance to s172(2).

### Expanded powers for regulators

- The report recommends that regulators should be:
  - given new powers to hold directors and controlling owners to account for their corporate purposes. It's suggested that these powers could include for example: a) the power to conduct market studies and investigations; b) the power to investigate complaints from stakeholders; c) the power to issue warning or fines where purposes have clearly been breached; and d) the power to make recommendations to other regulators.
  - required to ensure that the specific business sectors that provide public functions (eg banks, utilities) adopt purposes in alignment with the public interest based on engagement with stakeholders.

The report suggests that more broadly, 'all regulators would need to uphold the principle that companies do not profit from failing to meet the minimum standards that the regulator has set'.

Other recommendations include (among others): a) rethinking annual reporting to put 'purpose at the heart' of disclosures; and b) investors making purpose a focus of engagement with companies and ultimately a factor in evaluating their performance.

[Sources: British Academy report: Policy & Practice for Purposeful Business, The final report of the Future of the Corporation programme]



# Remuneration

## Tying incentives to reputation: Woolworths introduces 20% reputation metric into LTI

Following an independent review of the current remuneration framework, Woolworths has flagged several changes to 'strengthen alignment of the F22 performance measures with the Group's strategic objectives'.

The changes include:

- Long term incentive (LTI):
  - replacing the existing sales per square metre (sales/sqm) measure with a new Reputation measure. This new measure will have a 20% weighting
  - adjusting the weightings of financial metrics (Return on Funds Employed (ROFE) and Relative Total Shareholder Return (rTSR)) to 40% each

Broadly, financial metrics will have an 80% weighting with the remaining 20% made up with the non-financial reputation metric.

- Short term incentive (STI): replacing the existing safety performance measure with a 'more holistic Severity Rate' measure

Shareholders will have an opportunity to vote on the F22 grant of LTI to Woolworths CEO and Managing Director Brad Banducci which reflects these changes as well as (an advisory vote) on the remuneration plan at the upcoming AGM to be held as a virtual meeting on 27 October 2021.

[Source: Woolworths Notice of Meeting 27/09/2021]



# Diversity

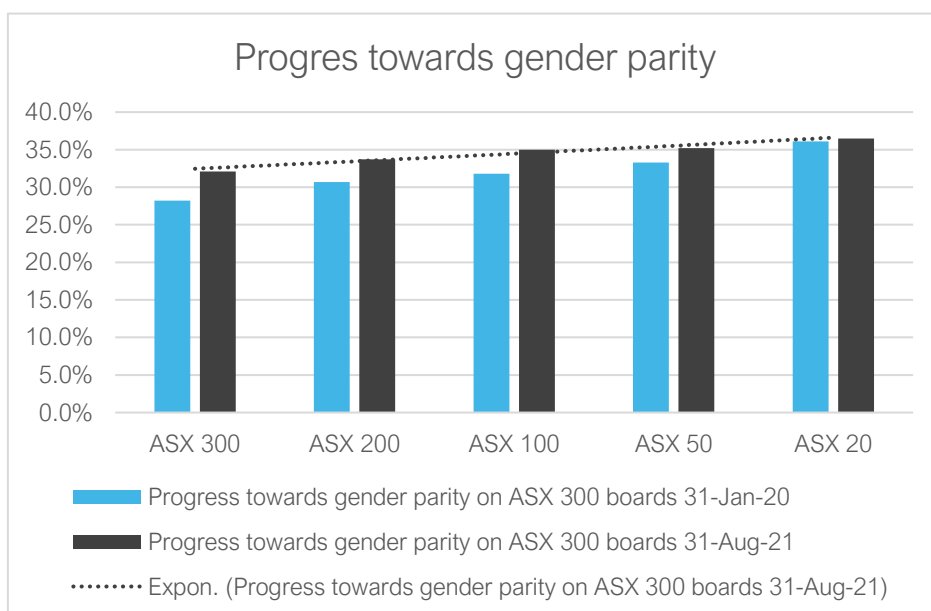
## Still work to do: ASX300 has cracked the 30% female board representation target (but not every individual board has reached it)

The Australian Institute of Company Director's (AICD) has released its [latest gender diversity statistics](#) tracking female board representation on ASX 300 boards.

### Key Takeaways

In aggregate, the 30% female board representation target has been reached across the ASX 300 and there are zero all male ASX 300 boards.

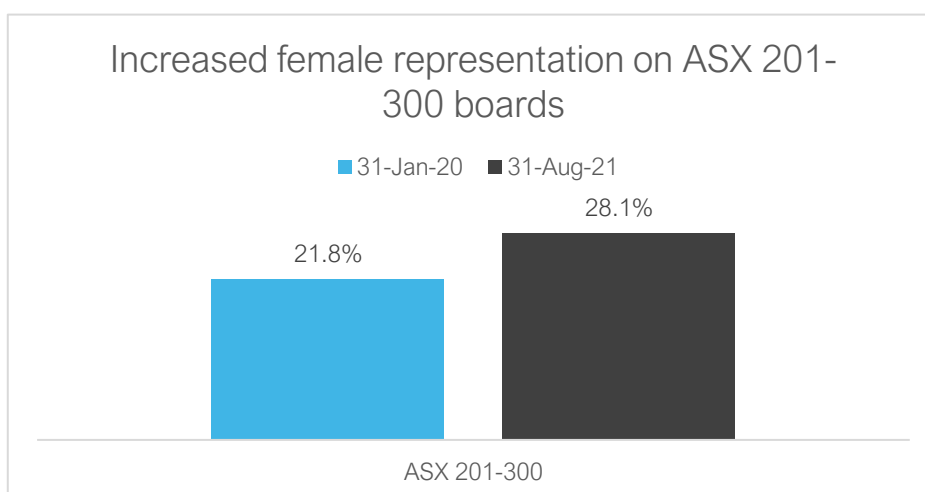
- Looking more closely, 74 ASX 200 boards are yet to reach the 30% target and 22 boards have only one woman member.
- Australia's largest companies have the most gender diverse boards: Women account for 36.5% of ASX 20 board roles dropping to 35% of ASX 100 roles and 32.1% of ASX 300 roles.



### ASX 201-300 boards are making progress...

The AICD highlights that the rate of progress in larger companies has been more modest over the 31 January 2020 to 31 August 2021 period than for smaller companies:

- The proportion of female ASX201-300 board members jumped 6.3% over the period
- This is over twice the rate of progress over the same period in the ASX200 (3%) and far outstrips the very modest 0.4% increase in female board representation on ASX20 boards.



AICD CEO and Managing Director Angus Armour has welcomed the progress made by ASX201-300 companies, describing it as a 'testament to the leadership and commitment of chairs and directors as well as groups who have pushed for change'.

### AICD supports the voluntary adoption of 40:40:20 targets for executive leadership

Mr Armour called on all companies to 'look further into the diversity of their executive teams' (ensuring a healthy leadership pipeline) as a means of maintaining and accelerating the rate of progress.

Referencing the recent [Chief Executive Women Senior Executive Census report \(summarised\)](#) which calls for companies to voluntarily adopt 40:40:20 gender targets for executive leadership teams, Mr Armour urged companies to

'use each appointment as an opportunity to shift towards a sustainable model of equality that ensures women are represented across each level of leadership. The AICD also encourage all organisations to embrace a 40:40:20 model of board gender diversity, where boards have at least 40 per cent women directors and 40 per cent men directors, as good practice'.

[Sources: AICD media release 22/09/2021]

**In Brief | A comparative study of 'comply or explain' vs a prescriptive approaches to increasing board diversity concludes that though the imposition of mandatory quotas achieves quick results, a more flexible, 'comply or explain' approach is effective (if slower) in achieving increased representation, while also mitigating some of the compliance costs associated with rules based approaches**

[Sources: Harvard Law School Forum on Corporate Governance and Financial Regulation 24/09/2021; Bakke, Tor-Erik and Field, Laura Casares and Mahmudi, Hamed and Virani, Aazam, The Impact of a Principles-Based Approach to Director Gender Diversity Policy (August 23, 2021). Available at SSRN: <https://ssrn.com/abstract=3910116> or <http://dx.doi.org/10.2139/ssrn.3910116>]



# Meetings and Proxy Advisers

## H1 2021 saw a spike in the level of support for shareholder HCM proposals at Russell 3000 companies

The Conference Board, together with ESGAUGE, Russell Reynolds Associates, Rutgers University's Center for Corporate Law and Governance, has released a [summary](#) of the key findings of its analysis of Environmental and Social (E&S) shareholder proposals and voting trends at annual shareholder meetings held by Russell 3000 companies in H1 2021.

### Key Takeaways

#### E&S proposals received 'unprecedented support in 2021

- H1 2021 saw support for environmental, social, and human capital management (HCM) proposals continue its three year upward trend with average support climbing from 22% in 2018, to 26% in 2020 to 33.5% in 2021
- Average support was highest for HCM proposals at 41.6% (up from 30% in 2020)
- Support for social proposals increased from 21.5% in 2020 to 26.3% in 2021
- Proposals on climate-related lobbying (which appear to be counted in the social rather than the environmental category) received 62.8% average support
- Environmental proposals averaged 33.9% versus 27.4% in 2020

#### High withdrawal rate

- Most (76%) of the proposals that were withdrawn ahead of a vote were E&S proposals
- Of the 372 E&S shareholder proposals that were filed, 41% were withdrawn ahead of a vote.
- HCM-related proposals were overall most likely to be withdrawn indicating, it's suggested, a willingness on the part of companies to negotiate an agreement with proponents on key issues such as workplace diversity and EEO-1 disclosure.

### A 'more contentious E&S shareholder proposal season' in 2022?

The writers predict that the volume of E&S shareholder proposals will continue to increase next year and that both proponents and companies may be less willing to negotiate agreements ahead of vote because:

- in light of the strong levels of support for proposals in 2021, proponents may be less willing to give ground
- boards may feel 'burned' given some major investors elected to vote in support of shareholder proposals despite the progress companies had made on certain issues
- pending SEC disclosure rules may also cause 'both sides to use this upcoming proxy season to stake out and hold firm to their positions, rather than find common ground'

### Suggested steps for companies to prepare

The writers suggest that boards can take steps to prepare for next year by:

- preparing to the likely 'wave' of E&S proposals by understanding which proposals are likely to gain majority support (unless the board agrees to the proposed changes)
- preparing and presenting the company's 'story' and data on likely shareholder proposal topics now
- maintaining ongoing dialogue with major investors in the long-term best interests of the company.

[Source: Conference Board media release 24/09/2021]

## Review of the 2021 US Proxy season: COVID sharpened investor focus on ESG, and in particular focus on DEI issues

Farient Advisors has released a [report](#) providing insights into the direction key governance trends including shareholder activism, following the 2021 US proxy season.



## Key Takeaways

- **More shareholder proposals are receiving majority support:** According to Farient, the number of shareholder proposals that proceed to a vote at S&P500 companies has remained stable at approximately 350 over the past five years. However, the success rate has doubled from 9.4% in 2017 to 14.8% in 2021, up from only 10.9% in 2020.
- **Investor support for 'say on pay' resolutions continues to trend down:** In 2017 the average level of support was 81.9%, decreasing 74.9% in 2019 to 72% in 2021. The report highlights 'in flight' changes to long term incentive plans (ie adjustments that ensure executives receive more favourable outcomes) as a particular area of concern for investors and proxy advisers.
- **Investor support for directors also continues its downward trend:** 2021 saw 8.7% of directors received less than 90% support (up from 5.5% in 2018). Farient attributes this primarily to investor concern over lack of board diversity and/or responsiveness to stakeholder concerns including management of ESG risk. The report tips diversity and inclusion as a key investor concern going forward and suggests that companies review their board recruitment processes and outcomes to meet new board composition requirements.

## A shift in disclosure/engagement practices by companies especially on HCM issues

- The report highlights that 2021 saw increased and more personal public disclosure by companies (eg through CEO letters) on a range of issues primarily around human capital management (HCM) issues (eg how companies managed the physical, emotional and financial wellbeing of employees and communities impacted by COVID-19).
- In addition, Farient found that the prevalence of HCM metrics in disclosures (eg health and safety, diversity and inclusion, training and development and employee engagement) increased.
- The report suggests that 'transparent disclosure' including 'robust discussions' around internal practices is becoming 'best practice', in response to both investor pressure and new regulatory requirements (though this is not the norm)
- Farient also found that the role of compensation committees was expanded to include a broader range of HCM related responsibilities and often renamed to reflect this (eg Compensation and Human Resource Committee)
- Farient attributes companies' increased focus on ESG to the impact of the pandemic which 'changed the way companies think about stakeholders'.

## Focus on Diversity Equity and Inclusion (DEI) predicted to continue to gain momentum

- Farient observes that in addition to increasing investor focus on DEI, many companies are now facing the additional pressure of new reporting requirements.
- According to Farient, only 25% of Nasdaq-listed companies currently meet NASDAQ's new diversity requirements which require most Nasdaq-listed companies to have, or explain why they do not have, at least two diverse directors, including one who self-identifies as female and one who self-identifies as either an underrepresented minority or LGBTQ+

## Looking ahead

- The report concludes that the 2021 proxy season demonstrated that investors are increasingly willing to exercise their votes to register concern on a range of ESG issues in particular, including lack of diversity and perceived lack of action on climate risk.
- The report recommends that companies prepare and embrace increased transparency on ESG issues and increased engagement with investors on these issues.
- The report also calls on companies to consider how they will/are measuring progress towards the achievement of ESG goals. Companies should consider integrating ESG metrics, including diversity targets, into executive pay packages to demonstrate commitment on this front.

[Sources: Farient media release 20/09/2021; Full text report: 2021 Governance updates: Getting ready for the next chapter]

# Shareholder Activism

## South32 board endorses ACCR climate-lobbying resolution

### Context

- The Australasian Centre for Corporate Responsibility (ACCR) has filed an ordinary shareholder resolution at South32 Ltd calling on the company to strengthen its review of industry association membership to ensure that the process identifies any areas of inconsistency between the lobbying/advocacy efforts of the associations to which it belongs, and the goals of the Paris Agreement, and that where inconsistencies are identified, the company suspends its membership for 'a period deemed suitable by the board'. The passage of the resolution is contingent on the passage of a separate special resolution to amend the company's constitution. The full text of the resolution and supporting statement are [here](#).
- The resolution is identical to the resolutions filed separately by the ACCR at Origin and BHP.
- The BHP board has [recommended shareholders vote in favour of the resolution](#). Importantly, BHP makes clear in its Notice of Meeting that despite its recommendation, the Board 'does not support or agree with the supporting statement' from ACCR. The BHP board has recommended shareholders vote against the accompanying constitutional amendment. This means that the resolution will not be formally carried even if it receives majority



support (as its passage is contingent on the passage of the constitutional amendment). For more detail see: [Governance News 22/09/2021 at p6](#)

## South32 has recommend shareholders vote in support of ACCR's lobbying resolution

The South32 board have recommended shareholders vote in favour of the ACCR's lobbying resolution because 'it aligns with the approach undertaken by the Company'. However, consistent with BHP's approach, the South32 board makes clear that it does not support claims made in the ACCR's supporting statement.

Also consistent with the approach adopted by BHP board, the South32 board recommends shareholders vote against the accompanying constitutional amendment on the basis that it is not in best interests of shareholders.

In a [statement](#), the ACCR welcomed the board's endorsement of the lobbying resolution. ACCR Director of Climate and Environment Dan Gocher commented:

'South32 has put its industry associations on notice over advocacy that is inconsistent with the Paris Agreement. By supporting ACCR's resolution, the board has acknowledged that some of the advocacy of its industry associations is at odds with effective climate action'.

[Sources: South32 Ltd Notice of Meeting 23/09/2021; ACCR media release 23/09/2021]

## Majority vote: A majority of AGL shareholders have backed a shareholder Paris-targets resolution against the board's recommendation

AGL's 2021 AGM was held on 22 September. All board-endorsed resolutions were carried, including the resolution to approve the remuneration report and separately the resolution to approve the grant of performance rights to AGL's CEO with both resolutions receiving over 90% support.

### Non-board endorsed resolutions

- **Paris Targets Resolution:** The Australian Centre for Corporate Responsibility (ACCR) resolution calling on AGL to disclose:
  - short, medium and long-term targets for reductions in the proposed demerged companies' Scope 1, 2 and 3 emissions in line with the goals of the Paris Agreement;
  - details of how the proposed demerged entities' capital expenditure will align with these targets; and
  - details of how the proposed demerged companies' remuneration policies will incentivise progress against these targets

received over 50% proxy support, despite the board's 'against' recommendation.

[According to Market Forces](#) this is the highest ever result in favour of a climate-related shareholder resolution, against the board's recommendation at an Australian company.

The resolution was not formally carried however because its passage was contingent on the passage of a separate constitutional amendment. The constitutional amendment received less than 6% support.

- In a [vote bulletin](#), BlackRock states that it voted in support of the ACCR's Paris targets resolution on the basis that it is 'consistent with our request of companies in carbon-intensive industries such as AGL. It is also our view that this proposal is not overly prescriptive nor unduly constraining on management's decision making and will help AGL further advance its commitments to transition away from coal-fired power over time'. BlackRock voted against the accompanying constitutional amendment in line with the board's recommendation. Similarly, ahead of the meeting, the Australian Shareholders' Association likewise [indicated](#) it would vote in support of the Paris targets resolution and against the constitutional amendment.
- **Election of student climate activist Ashjayeen Sharif to the board:** Mr Sharif was not elected to the board in line with the board's recommendation. Mr Sharif campaigned on a platform of calling for AGL to replace its coal burning power stations with renewables by 2030 and to return AGL to profitability.

[Sources: AGL Energy Ltd Results of meeting 22/09/2021; ACCR media release 22/09/2021; Market Forces media release 22/09/2021; Greenpeace media release 22/09/2021; BlackRock vote bulletin AGL]

# Disclosure and Reporting

## UK regulator releases guidance to address greenwashing, puts firms on notice that it will launch a compliance review in 2022

- On 20 September 2021, the UK Competition and Markets Authority published [its final guidance](#) for businesses on how to avoid greenwashing and comply with their existing obligations under UK consumer law (based on the CMA's views on the law relating to unfair commercial practices). The CMA has also released a ['greens claim checklist'](#) setting out 13 questions for businesses to consider before making an environmental claim.
- The guidance is intended to apply to all businesses who make environmental claims and to both business-to-consumer and business to business communications.
- The guidance sets out six principles supported by illustrative examples/case studies, designed to support compliance. The principles are primarily focused on issues that arise in the context of misleading acts and omissions. The principles overlap somewhat and the CMA expects that depending on the circumstances one principle, a combination of principles, or all principles may apply.

### Six principles

A high level overview of the principles is below.

PRINCIPLE	CMA COMMENTARY
Claims must be truthful and accurate	<ul style="list-style-type: none"><li>'Businesses must live up to the environmental claims they make about products, services, brands and activities'.</li><li>The guidance includes a number of questions that companies should ask before making an environmental claim. These include the following:<ul style="list-style-type: none"><li>whether the claim is factually correct</li><li>whether broad claims (eg 'eco-friendly', 'green') can be evidenced/have no negative impact</li><li>whether they are using a term that has a 'generally understood meaning by consumers' (eg 'organic') and taking this into account, whether use of that term is merited</li><li>whether the claim is only true/accurate under certain conditions/caveats and if so, whether these have been made clear</li><li>whether the claim, even if factually correct, could give consumers a false impression</li><li>whether the claim advertises environmental benefits that are required by law/that consumers would expect anyway</li></ul></li></ul>
Claims must be clear and unambiguous	<ul style="list-style-type: none"><li>The CMA expects claims to be worded clearly and in a way that is easily understood by consumers.</li><li>The guidance includes a number of questions that companies should ask before making an environmental claim. These include the following:<ul style="list-style-type: none"><li>whether the terms used are clear and widely understood by consumers. The guidance suggests that 'key words' should be defined if this is not the case. If space/time limits make this 'impossible' then the CMA suggests that businesses should make clear how consumers can access the information (eg through a direct hyperlink)</li><li>whether 'vague' or 'general' terms (eg 'eco') are used and if so, whether they are explained</li><li>whether the claim relates to the whole product or only part of it. If the claim only relates to part of the product whether this is clear</li></ul></li></ul>
Claims must not omit or hide important relevant information	<ul style="list-style-type: none"><li>Claims must not omit information that could give consumers an unbalanced picture of the overall environmental impact of a product/service. That is, claims should include the information that consumers need to make an informed decision</li></ul>



PRINCIPLE	CMA COMMENTARY
	<ul style="list-style-type: none"> <li>▪ The guidance includes a number of questions that companies should ask before making an environmental claim. These include the following: <ul style="list-style-type: none"> <li>– whether the claim reflects the overall lifecycle of all components/ingredients of the product</li> <li>– whether consumers are provided with the information they need to make an informed choice about the environmental impacts of the product/service</li> <li>– whether information about the durability of the product and/or the disposability of the product should be disclosed</li> <li>– whether a caveat should be included</li> </ul> </li> <li>▪ The CMA suggests that where further information is needed but cannot be included due to space/time limitations, the 'form of communication' should be reconsidered. If the particular communication channel is used, it's suggested that consideration should be given to how else the relevant information can be made available to consumers eg on a website</li> </ul>
Comparisons must be fair and meaningful	<ul style="list-style-type: none"> <li>▪ The CMA expects any comparisons to be: a) based on clear, objective, accurate and up to date information; b) compare 'like' with 'like'; and c) make the basis for the comparison clear.</li> </ul>
Claims must consider the full life cycle of the product or service	<ul style="list-style-type: none"> <li>▪ The CMA expects businesses to consider which 'elements of the life cycle of a product or service are most likely to be of interest to consumers when making an environmental claim and how they affect the accuracy of that claim'. The CMA observes that claims that reflect the whole of the product life cycle or the most significant elements of it are less likely to be misleading.</li> <li>▪ In terms of the extent of disclosure required (ie whether the full life cycle of a product is information the consumer needs to make an informed choice) will depend on the particular product.</li> <li>▪ The guidance suggests a number of questions that companies should ask before making an environmental claim. These include the following: <ul style="list-style-type: none"> <li>– whether the claim reflects the whole product life cycle and whether the focus of the claim is on the aspects of a product or business that have the most significant environmental impact;</li> <li>– whether any limitations of the claim are clearly stated</li> <li>– whether the overall impression about the impact of the product/service overall is accurate or whether the claim focuses only on part of a product life cycle and in doing so presents an overly positive picture (by drawing attention away from negative aspects)</li> </ul> </li> </ul>
Claims must be substantiated	<ul style="list-style-type: none"> <li>▪ Environmental claims should be backed up by evidence.</li> <li>▪ The guidance includes a number of questions that companies should ask before making an environmental claim. These include the following: <ul style="list-style-type: none"> <li>– whether the business has robust, credible and up-to-date evidence (eg published research, studies commissioned or conducted by the business) to support the claim</li> <li>– whether the evidence to substantiate the claim is based on accepted science or understanding or is it contested or unproven (the CMA observes that claims based on unproven/contested evidence are more likely to be misleading)</li> <li>– whether the evidence has been subject to independent scrutiny</li> <li>– whether consumers are able to access the evidence verify the claims</li> </ul> </li> </ul>

## Compliance review scheduled for 2022

- The CMA will commence a compliance review in January 2022 and consider enforcement action where appropriate.
- The CMA cautions that where there is evidence of breaches of consumer law, it may also take appropriate action even before the formal review begins.

- A [CMA co-ordinated global review](#) of randomly selected websites released in January 2021 found that 40% of green claims made online could be misleading to consumers.

[Source: CMA media release 20/09/2021]

## Ahead of the release of its planned mandatory climate risk disclosure rule, SEC has highlighted gaps in climate-related disclosure

To bolster compliance with existing climate-related disclosure requirements, and ahead of the [planned development of a mandatory climate risk disclosure rule by the end of 2021](#), the US Securities and Exchange Commission (SEC) has released a 'sample letter' to illustrate some of the issues that companies should consider and the questions they could face from the regulator, concerning their climate-related disclosure/lack of disclosure.

Issues flagged in the letter include the following.

- Extent of disclosure provided: Where more extensive climate-related disclosure is provided in a corporate social responsibility (CSR) report than in SEC filings, the regulator may ask the company to provide an explanation as to why this is the case.
- Risk factors (including litigation risk): Companies are expected to disclose both any material climate-related litigation risks with potential to impact the company as well as the material effects of transition risks on the business.
- Management's 'Discussion and Analysis of Financial Condition and Results of Operations' is expected to include:
  - discussion of significant developments in federal/state and/or international legislation/regulation that may materially impact the business, financial condition and results of operations
  - disclosure of any material past and/or future capital expenditures for climate-related projects (and quantify these expenditures)
  - discussion of the indirect consequences of climate-related regulation or business trends eg decreased demand for carbon heavy goods/services and/or increased demand for goods that result in lower emissions.
  - discussion of the physical effects of climate change on operations and results (where material) and quantification of any material increased compliance costs related to climate change
  - disclosure of information about the purchase/sale of carbon credits or offsets and any material effects on the business, financial condition, and results of operations.

The sample letter concludes with the reminder that 'company and its management are responsible for the accuracy and adequacy of their disclosures, notwithstanding any review, comments, action or absence of action by the staff'.

[Source: SEC Sample Letter to Companies Regarding Climate Change Disclosures]

## SASB standards continue to gain traction: More than half of the S&P 500 now use the standards in their external communications to investors

The Value Reporting Foundation (VRF) has [welcomed](#) the surge in the adoption of the SASB Standards across a range of markets worldwide since their launch in 2018.

For context, the SASB standards are 'globally applicable industry-specific Standards which identify the minimal set of financially material sustainability topics and their associated metrics for the typical company in an industry'.

According to the VRF:

- The number of SASB Standards reporters globally increased 215% between 2020 and 2021 and 375% between 2019 and 2020.
- 65% of the companies in the S&P Global 1200 index, and 20% of companies in the S&P/ASX All Australian 50, use the SASB Standards in their external communications to investors.

VRF CEO Janine Guillot welcomed the increased adoption of the Standards globally, but made clear that the VRF will 'continue to pursue global alignment within the corporate reporting system, including participating in the IFRS Foundation Technical Readiness Working Group to inform plans for the International Sustainability Standards Board (ISSB), which we wholly support.'

[Source: Value Reporting Foundation media release 22/09/2021]



## Keeping pace with developments: The FRC has released FAQs on global sustainability standards setting

- In response to investor demand for more consistent and comparable sustainability information the International Financial Reporting Standards Foundation (IFRS Foundation) intends to establish an International Sustainability Standards Board for the purpose of developing common, global sustainability reporting standards.
- The FRC expects that a draft standard on climate will be published in 'early 2022' with other standards on a range of sustainability topics to follow.
- Given the significance of the IFRS project, and the impact on future reporting, the UK Financial Reporting Council (FRC) has released [a fact sheet](#) outlining responses to several 'frequently asked questions' to help investors keep pace with developments.
- The fact sheet provides: a short explanation of the IFRS project; the FRC's views on the expected timeframe for the release of the standards; the impact on reporting for UK companies; commentary on the way in which the new global standards will interact with existing voluntary reporting frameworks as well as with existing UK non-financial reporting requirements; and the FRC's role/activities with respect to the development of the global standards.

[Source: FRC media release 23/09/2021]





# Institutional Investors and Stewardship

## IGCC calls on the Federal government to commit to net zero by 2050 and to mandate 'best practice' climate disclosure

Ahead of the COP26, the global climate negotiations due to be held in Glasgow this November, the Investor Group on Climate Change (IGCC) has [called](#) on Australia's Federal, State and Territory governments to commit to stronger Paris-aligned 2030 emissions reduction targets. Specifically the IGCC has called on governments to:

- 'Set a net zero emissions commitment by 2050 with clear transition policies for each segment of the economy
- Commit to phasing in mandatory climate-risk disclosures to match best practice and support unlocking trillions in private capital looking for green investment opportunities in Australia'

### Some context

The call follows both the Treasurer's address to the [Australian Industry Group](#) in which he emphasised the link between Australia's economic competitiveness and its stance on climate risk management/emissions reduction and NSW's announcement of more ambitious emissions reduction targets.

It also follows the [statement](#) (and accompanying [fact sheet](#)) by the Quad leaders' summit which committed Quad countries (among other things) to 'working together to limiting global warming to 1.5 degrees above pre-industrial levels (this is covered in more detail in a separate post in this issue of Governance News).

### Treasurer's address to the AIG

Treasurer Josh Frydenberg [acknowledged](#) that climate risk 'represents a structural and systemic shift in our financial system, which will only gain pace over time' and which represents both risks and opportunities for business.

Mr Frydenberg also acknowledged the link between Australia's economic competitiveness and the way in which our national climate response is perceived by global markets, emphasising that failure to manage climate risk effectively (and being perceived to be doing so) could have the 'potential to create financial system instability'.

Mr Frydenberg made clear that:





'We [Australia] cannot run the risk that markets falsely assume we are not transitioning in line with the rest of the world. Were we to find ourselves in that position, it would increase the cost of capital and reduce its availability, be it debt or equity'.

Having said this, Mr Frydenberg also spoke about the opportunities that will flow from the transition to a low-carbon economy from a business perspective and called on business to embrace these opportunities.

The Treasurer called for banks, superannuation funds and insurers that have committed to net zero to continue to invest in 'the very sectors that will need investment to successfully transition'.

Mr Frydenberg stopped short of committing to a national net-zero target though he appeared to welcome the adoption of net zero commitments by companies and large investors.

## NSW emissions reduction commitment

The NSW government has announced ([ABC](#), [The AFR](#), [The Australian](#)) that it will halve emissions from 2005 levels by 2030 as a stepping stone to reaching its net zero by 2050 target. This is expected to generate significant investment flows for the State.

[Welcoming this commitment](#), IGCC CEO, Rebecca Mikula-Wright said that it underlines the growing gap between Australia's national position on the issue and that of global markets. Ms Mikula-Wright said:

'The announcement from the NSW Government aligns with global capital market realities and will support investment in new jobs and net zero industry in the state. Australia's largest states are increasing their climate ambition in line with our major trading partners in the G20, including the US, Japan, Canada and the European Union. The emerging gap between Australia's current national 2030 emissions targets and mainstream global investor practice, and company commitments to action, is a concern to institutional investors. Markets that do not match 2030 and 2050 net zero targets of major trading partners will become less competitive in attracting international investment into their economy and industries. Climate change is now widely recognised as a material risk for investors...Strong climate policies in Australia could unlock \$131 billion of fresh investment and job opportunities by the end of the decade.'

[Sources: IGCC media release 29/09/2021; Treasurer Josh Frydenberg Address to the Australian Industry Group, 'Capital markets and the transition to a low emissions future' 24/09/2021]

## \$10trn coalition of investors calls on governments to act on biodiversity loss

A \$10trn coalition of 78 investors coordinated by Ceres and the Finance for Biodiversity Foundation (full list of signatories [here](#)) have signed a [Statement](#) ahead of COP26 calling on governments to ensure that their actions/policies to deliver net zero emissions in line with the goals of the Paris Agreement, also include actions to arrest global biodiversity loss.

Specifically, the Statement calls on governments to:

- 'Agree on an ambitious and transformational post-2020 GBF [Global Biodiversity Framework] that requires the alignment of financial flows to global biodiversity goals;
- Strengthen national biodiversity strategy and action plans (NBSAPs) to ensure successful implementation of the GBF and enforce domestic policies to deliver biodiversity targets;
- Establish a regulatory environment that enables financial institutions to address biodiversity-related risks and opportunities, including introducing consistent and decision-useful corporate disclosure requirements;
- Remove all harmful subsidies and reverse them into aligned subsidies to bring about change in the real economy and alleviate market failures'.

The statement confirms investors' own commitment on the issue, and calls on governments to take the necessary steps to 'accelerate and scale up private capital flows toward a net zero and nature positive economy'.

[Sources: Ceres media release 21/09/2021; Financial Institution Statement]

## In Brief | Failing to walk the talk on climate? Think Tank Universal Owner has issued a report questioning whether Vanguard is living up to its stated climate commitments and role as a 'universal owner'

[Sources: Universal Owner media release; Full text report: Vanguard and Universal Ownership]

# Regulators

## Top Story | APRA confirms Q4 policy priorities

On 24 September 2021, the Australian Prudential Regulation Authority (APRA) released a [letter confirming its updated policy priorities](#) for the remainder of 2021 in light of the ongoing impacts of COVID-19 and other regulatory changes on regulated entities.

APRA states that its focus for Q4 is centred on the completion of key reforms to strengthen financial resilience. A summary is below.

APRA also plans to release an Information Paper setting out its framework for the use of macroprudential policy tools in Q4 2021.

### Revised policy priorities for Q4 2021

#### Cross industry

- APRA plans to finalise guidance on managing the financial risks of climate change in Q4 2021.

[Note: APRA consulted on [draft CPG229 Climate Change and Financial Risks](#) earlier in the year (Summary in [Governance News 28/04/2021 at p10](#))]

- APRA will release new draft standards for financial

contingency planning and resolution for consultation in November 2021 with a view to finalising the changes in 2022. APRA expects that the new standards will come into effect in 2023.

- APRA plans to release CPG 511 Remuneration guidance in Q4 2021. However, APRA has pushed back the consultation on new remuneration disclosure requirements (changes to CPS511) to 2022. The planned commencement date is still 2023.
- APRA's plans to consult on CPS 520 Fit and Proper are unchanged – the regulator plans to consult on in 2022. No planned effective date is specified.



#### Delays

- Consultation on APRA's stress testing prudential practice guide has been delayed until 2022
- APRA has pushed back the planned consultation and commencement dates for operational resilience standards – APRA now plans to consult in 2022 with a view to the changes coming into effect in 2024
- APRA has also pushed back the planned commencement dates for CPS510 Governance and CPS 220 Risk Management by one year to 2024
- NOHC Authorisation guidelines will now be finalised in 2022 (not Q4 2021)

## Banking

- APRA will finalise: APS 110 Overall Approach to Capital Requirements; APS 112 Standardised Approach to Credit Risk and APS 113 Internal Ratings Approach to Risk in Q4 2021. The new standards are expected to come into effect in 2023.
- APRA will also finalise APS 220 Credit Risk Management. No expected commencement date is specified.

## Delays

- The planned consultation and commencement of APS 330 Disclosure Requirements have been deferred: consultation will now take place in 2022 (not Q4 2021). APRA plans for the changes to come into effect in 2024 (rather than 2023)
- APS 117 Interest Rate in the Banking Book will be finalised in 2022 (not Q4 2021) and is expected to come into effect in 2024 (not 2023)
- Standards/guides on stored value facilities will be consulted on and finalised in 2022 and are expected to come into effect in 2023

## Insurance

- APRA will consult on ASSB 17 and LAGIC updates and changes to the PHI capital framework in Q4 2021. The expected effective date for these changes is 2023.

## Delays

- Standards for offshore reinsurers and LPS117 are expected to be finalised in 2022 (not Q4 2021). The planned commencement date remains 2023.

## Superannuation

- APRA will finalise SPS 250 and SPG 250 Insurance in Superannuation ahead of a more comprehensive review of other key standards in 2022. The expected effective date for the changes is 2022.
- SPS 310 audit will be consulted on in Q4 2021
- There has been no change to APRA's plans to consult on the following in 2022:
  - SPS515 Strategic Planning member Outcomes
  - SPS510 Governance
  - SPS220 Risk Management
  - SPS521 Conflicts of Interest

## Delays

- APRA will consult on SPS530 Investment governance in Q4 2021 but the changes are not expected to be finalised until 2022 (rather than Q4 2021).

[Note: On 29 September 2021, [APRA released draft changes to SPS530 for consultation](#). The due date for submissions is 16 February 2021.]

APRA intends to provide a 'full update' on its policy agenda for the 2022-23 period 'early next year'.

[Source: APRA policy priorities: Interim update 24/092021]

# Financial Services

## 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 or have been deferred due to COVID-19.

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 **29 September 2021** to reflect developments relating to implementation of recommendations 3.4 (prohibition on hawking of superannuation products) and 4.1 (prohibition on hawking of insurance products). You can access the full text [here](#).

## Hayne Implementation: ASIC has released guidance (RG 38) on hawking reforms due to commence 5 October

### Overview: ASIC Regulatory Guide 38 The Hawking Prohibition

Following consultation, the Australian Securities and Investments Commission (ASIC) has issued final guidance - [RG 38: The hawking prohibition](#) - to support compliance with the anti-hawking reforms that will take effect from 5 October 2021.

The anti-hawking reforms implement the government's response to Hayne Recommendations 3.4 (hawking of superannuation products should be prohibited) and 4.1 (hawking of insurance products should be prohibited).

ASIC has also released [Report 701 Response to submissions on CP 346 The hawking prohibition: Update to RG 38 \(REP 701\)](#) summarising the key issues raised in submissions to the consultation and its response.

Consistent with the draft guidance, the final RG 38 draws heavily on the [explanatory memorandum](#) to the Financial Sector Reform (Hayne Royal Commission Response) Bill 2020 and supplements the textual guidance with illustrative examples.

In response to feedback, a number of clarifications and additional guidance on specific issues has been added to the final guidance. The number of illustrative examples included has been expanded from 18 to 30.

### The scope of the hawking prohibition in s992A

- The guidance outlines the products that are in scope and exempt from the prohibition.
- The response paper states that that ASIC considers that the hawking prohibition in s992A 'does not apply to credit products (except when they are also financial products). As such, we think the law is clear that credit products and buy now pay later products are not subject to this prohibition'
- In response to feedback, the final RG38 includes specific guidance together with illustrative examples on: offers of basic banking products where the customer initiates contact; the renewal of recently lapsed products and the application of the exemptions to stockbrokers.

### What it means to make an offer 'because of ' or during an unsolicited contact:

- Unsolicited contact:
  - The guidance clarifies that for the purposes of the anti-hawking regime, unsolicited contact is contact that takes place 'in real time' to which the consumer did not consent. ASIC describes 'real time interactions' as interactions where 'the offeror and consumer respond to each other continuously in real time, or where an expectation exists that both parties will provide an immediate response to each other' whatever the medium).
  - As such, ASIC states that the prohibition 'does not generally apply to advertising' or 'the mere provision of information' because it is not 'real time interaction'.



- RG 38 includes guidance on the meaning of the words 'because of' in the hawking prohibition. Under s992A(1)(b), for a breach to occur, the offer, request or invitation to the consumer must be made 'because of' or 'in the course of', an unsolicited contact.

## **Establishing consumer consent to be contacted**

- The guidance states that 'in order to make an offer, request, or invitation in relation to a financial product, an offeror must receive consent from a consumer to contact them'. This consent needs to be:
  - 'positive and voluntary': the consumer needs to take an active step/make a conscious decision to initiate the contact and this must be done voluntarily. Importantly consent 'cannot be given through silence or failure to act'.
  - consent to further contact needs to be clear and reasonably understood: The guidance states that a 'consumer's consent must demonstrate that they understand they are consenting to being contacted for the purpose of being offered, or invited to purchase or apply for, a financial product. For consent to be clear, it must not be vague or ambiguous' and 'silence on the part of a consumer will generally not provide a clear basis for consent'. Example 16 at p24 of RG38 gives an example of ambiguous language. Where the offeror does not obtain consent directly from the customer themselves (because it is obtained through a third party), the offeror must nevertheless establish that 'the consent was positive, voluntary, clear and reasonably understood prior to making an offer'.
  - given before the start of the contact (except where the consumer initiates real-time interaction directly)
  - may be withdrawn at any time prior to or during the course of the contact
- Bundling of financial products: Consistent with the explanatory memorandum, RG38 states that 'a consumer may be offered more than one financial product during a contact if the consumer consented to being contacted about multiple products before the contact, or the consumer's consent is sufficiently broad so as to reasonably apply to more than one product'. This means that consent should not be assumed to apply to bundled products unless the consent is sufficiently broad to 'reasonably apply to each of the products'.

## **Guidance on keeping records of consumer consent**

- ASIC expects offerors to keep records of consumer consent, noting that in light of the fact that consumers are able to withdraw their consent at any time, the 'maintenance of records will be necessary for offerors to demonstrate compliance'. Examples of the information records should include is listed at p38 of RG 38 at RG38.124.
- The response paper acknowledges that some submissions raised concerns about/sought further guidance around record keeping and in particular, the minimum amount of time records are expected to be kept.
- RG 38 gives no guidance on how long records should be kept beyond stating that 'How long these records may need to be kept will vary depending on factors such as the product term. Offerors should use their judgement to consider the nature of the product and determine whether documents should be kept for a longer period. If an offeror keeps records only for a short period of time, they may place themselves at risk of being unable to demonstrate compliance with their obligations.' ASIC maintains that as the appropriate period will depend on the circumstances, industry remains best placed to determine this.

## **Breach of the anti-hawking prohibition**

- Breach of the hawking prohibition is a strict liability offence.
- If an offeror breaches the prohibition, a consumer has the right to return the product that was acquired and receive a refund. RG 38 includes guidance on the way in which a product may be returned and refunded depending on the type of financial product.

## **Right to return**

- RG 38 explains that under s992AA, where the hawking prohibition is breached, a consumer has a right to return any financial product issued/sold to them and to receive a refund within one month and 14 days from the date that the product was issued or sold. Or, if a statutory cooling-off period applies to a product under s1019B, under s992AA(1)(a) the consumer can return the product and obtain a refund within one month after the expiry of the cooling-off period.
- ASIC considers it would be 'good practice for offerors to include information about the right of return in their communication with consumers'.
- RG38 does not include further guidance on how refunds should be calculated.

## Consultation: Draft legislation to establish a retirement income covenant released for consultation

Treasury is consulting on draft legislation - [Treasury Laws Amendment \(Measures 4 for a later sitting\) Bill 2021: Retirement income covenant](#) – to legislate a 'retirement income covenant'.

[Announcing the consultation](#) Minister for Superannuation, Financial Services and the Digital Economy Jane Hume said that the rationale behind the proposal is to 'give retirees the confidence to spend their superannuation savings, while enabling choice and competition in the retirement phase of superannuation'.

Subject to the passage of legislation, the retirement income covenant will take effect from **1 July 2022**. The due date for submissions is **15 October 2021**.

### Specifics

- If legislated in its current form, the Bill would legislate the proposed 'retirement income covenant'. That is, the draft Bill would amend the Superannuation Industry (Supervision) Act 1993 (SIS Act) to introduce a requirement for trustees of registrable superannuation entities (RSEs) to develop, regularly review and give effect to a retirement income strategy for beneficiaries who are retired or are approaching retirement.
- General advice: The retirement income strategy would be required to outline the trustee's plan to assist beneficiaries covered by the strategy 'in generality'. The draft explanatory memorandum makes clear that  
'Trustees can fulfill the requirements of the covenant and create effective retirement income strategies without providing personal advice. The retirement income strategy is to express the general actions the trustee will take to assist their members to balance key retirement income objectives. It also does not need to consider the specific circumstances of individual members'.
- Beneficiaries in scope:
  - Trustees would have discretion to determine the class of beneficiaries that are retired or who are approaching retirement for the purposes of the strategy.
  - Trustees would not be required to formulate a strategy for certain defined benefit members.
  - The covenant would **not apply** to trustees of self managed superannuation funds.
- The strategy would need to meet certain requirements such as covering relevant beneficiaries and addressing how the trustee will 'assist beneficiaries to achieve and balance' the following three objectives': 1) maximise expected retirement income; 2) manage expected risks to the sustainability and stability of their expected retirement income; and 3) have flexible access to expected funds during retirement. Trustees would have discretion on how these objectives are to be balanced.
- Trustees would be required to:
  - Take reasonable steps to gather the information about their beneficiaries necessary to inform the formulation and review of their strategy. The explanatory memorandum emphasises that in light of the general nature of the strategy 'reasonable steps should only involve gathering information to the extent necessary to form a broad understanding of beneficiaries as a group in order to identify the types of assistance that could be offered to beneficiaries to achieve and balance the three objectives'.
  - Record each determination made by the trustee for the purposes of the strategy, the steps taken to gather information, each decision the trustee considers to be significant in the process of formulating, reviewing or giving effect to the strategy, and the reasons for those determinations, decisions and steps.
  - Publish a summary of the strategy on the RSE's website.
- Failure to comply: The new obligations would be part of the s52 covenants. Contravention could incur a civil penalty. Where the contravention involves dishonesty or an intention to deceive or defraud, a criminal offence applies.

[Sources: Treasury Consultation: Retirement Income Covenant 27/09/2021-15/10/2021; Minister for Superannuation Financial Services and the Digital Economy Jane Hume media release 27/09/2021]

## ASIC is monitoring the rise in 'pump and dump' activity, the regulator has called on market participants to 'take active steps' to identify and stop potential misconduct

- The Australian Securities and Investments Commission (ASIC) has flagged its concern about the rise in social media posts being used to coordinate 'pump and dump' activity in listed stocks.
- ASIC observes that market manipulation is illegal and may attract significant penalties including possible imprisonment.
- ASIC Commissioner Cathie Armour said that the regulator is working with market operators to identify and disrupt 'pump and dump' campaigns and will 'continue to target actions that threaten the integrity of markets and to take enforcement action where appropriate'.

### Expectations of market participants

- Ms Armour also outlined ASIC's expectations of market participants. Ms Armour said ASIC expects:  
'Market participants, as gatekeepers...[to] take active steps to identify and stop potential market misconduct. They should consider the circumstances of all orders that enter a market through their systems, and be aware of indicators of manipulative trading'.
- Mr Armour stated that ASIC expects participants to promptly submit suspicious activity reports where this type of activity is identified.
- Ms Armour encouraged listed entities to report any suspicious activity they detect in their listed securities to the Australian Securities Exchange (ASX) or ASIC, including any sudden and unexplained price moves.
- Finally, Ms Armour encouraged both investors and consumers to report any misconduct to ASIC.

[Source: ASIC media release 23/09/2021]

## APRA is consulting on proposed changes to SPS530 Investment Governance

The Australian Prudential Regulation Authority (APRA) is consulting on proposed revisions to Prudential Standard SPS 530 Investment Governance (SPS 530).

APRA states that the focus of the proposed changes is on enhancing stress testing, valuation and liquidity management practices. The proposed changes respond to the findings from APRA's unlisted asset valuation thematic review and APRA's 2018-2019 post-implementation review (PIR) of the superannuation prudential framework.

A clean and marked up version of the draft guidance, together with a letter outlining the background to the proposed changes and next steps, is available on the APRA website [here](#).

The due date for submissions is **16 February 2022**.

### Next steps

- APRA plans to consult on updated guidance (Practice Guide SPG 530 Investment Governance and Prudential Practice Guide SPG 531 Valuation) in 2022, following consultation on the draft standard.
- Subject to the outcomes of the consultation, APRA intends that the enhancements to SPS 530 will commence on 1 January 2023.

[Sources: Consultation on Prudential Standard SPS 530 Investment Governance in Superannuation]

## In Brief | In light of ongoing COVID-19 disruption, APRA has released updated frequently asked questions for private health insurers on the application of the capital framework for COVID-19 related disruptions. The FAQs replace the version issued in March 2021.

[Source: APRA: Application of the capital framework for COVID-19 related disruptions - frequently asked questions]

# Risk Management

## Cybersecurity, Technology and Privacy

### Top Story | Unmasking Financial Services' IT costs in M&A

MinterEllison has published an article discussing the hidden costs of technology in M&A and how this can be managed. You can access the full text [here](#).

### ACCC says phone scams are 'exploding': losses reported to Scamwatch top \$211m

The Australian Competition and Consumer Commission (ACCC) [reports](#) that scam activity has spiked over the 1 January 2021 to 19 September 2021 period in part fuelled by the shift to online shopping/online deliveries due to ongoing COVID-19 restrictions.

#### Key Takeaways

- **Record losses:** \$211 million in losses to scams have been reported to Scamwatch so far this year. For context, this exceeds the total losses for the whole of 2020 (\$175.6 million) and is an 89% jump on the same period last year.
- **People are losing more:** The proportion of reports involving a financial loss has decreased this year. The reported loss has increased from \$7000 for the same period in 2020 to \$11,000
- **Phone scams are 'exploding':**
  - Phone scams accounted for 31% of losses (\$62.6 million) and over 50% of total Scamwatch reports concerned phone scams.
  - Scams often involved scammers impersonating representatives from well known companies purporting to be able to assist people by processing refunds for large, bogus purchases made on their behalf.
  - In August there was a spike in new Flubot malware scams (fake voicemail and parcel delivery scams) which resulted in more than 13,000 reports in eight weeks.
- **Other forms of scam have also increased significantly:**
  - There been a 261% increase in phishing scams
  - There has been a 144% increase in remote access scams
  - There has been a 234% increase in identity theft
  - There has also been a 172% increase in losses to investment scams
- **People most impacted:**
  - People aged 65 years and older have lost the most money so far in 2021, losing \$49.1 million, or 23% of total losses for the year
  - Indigenous Australians have reported \$4.3 million in losses to scams, an increase of 172% on the losses reported in the same period in 2020.
  - People who speak English as a second language lost \$29.9 million to scammers (accounting for 14.4% total losses for the period).

The ACCC has called on consumers to be vigilant and to report scams to scamwatch even where they don't suffer any financial loss.

[Source: ACCC media release 27/09/2021]

## Climate

### China says it will not build any new coal fired power projects abroad

- In [his address](#) to the UN General Assembly Chinese President Xi Jinping stated that as part of China's efforts to meet its emissions reductions targets, it 'will not build new coal fired power projects abroad'.



- This follows the Reserve Bank of Australia's recent [warning](#) that 'as global appetite for coal tapers off from 2030 onwards under all scenarios except for the baseline, Australian coal-related investments are at risk of becoming 'stranded assets' as lower export volumes and prices weigh on firm profitability'.
- In a [statement](#), Market Forces argues that China has historically provided a significant portion of lending to the Australian coal industry and that in light of this, President Xi Jinping's statement is a 'body blow to Australian coal exporters, whose plans for growth are predicated on delusions of new coal power plants being built across Asia'.

[Source: RBA Bulletin – September 2021 Global Economy Towards Net Zero: Implications for Australia of Energy Policies in East Asia 16/09/2021; Translation: Statement by HE Xi Jinping President of the People's Republic of China At the General Debate of the 76th Session of the United National General Assembly 21/09/2021; Market Forces media release 22/09/2021]

## Quad Summit affirms commitment to limiting global warming to 1.5 degrees

On 24 September 2021, President Joe Biden, Prime Minister Scott Morrison, Prime Minister Narendra Modi and Prime Minister Yoshihide Suga met for the inaugural in-person leaders' Summit of the 'Quad alliance'.

Among other things, the leaders committed to:

- Working together to limiting global warming to 1.5 degrees above pre-industrial levels. This includes 'working on 2030 targets for national emissions and renewable energy, clean energy innovation and deployment as well as adaption, resilience and preparedness'.
- Pursuing 'enhanced actions in the 2020s to meet anticipated energy demand and decarbonise at pace and scale to keep our climate goals within reach in the Indo-Pacific' eg through working together on methane abatement in the gas sector and on establishing responsible and resilient clean-energy supply chains.
- Establishing a 'green shipping network':
  - Quad countries will organise a Quad Shipping Taskforce and will invite leading ports (Los Angeles, Mumbai Port Trust, Sydney (Botany), and Yokohama) to form a network dedicated to greening/decarbonising the shipping value chain
  - The Quad Shipping Task Force will aim to establish 'two to three Quad low-emission or zero-emission shipping corridors by 2030'.
- Establishing a 'clean-hydrogen partnership': The partnership will work together to reduce costs across all elements of the clean-hydrogen value chain, leveraging existing bilateral and multilateral hydrogen initiatives in other fora. This includes: technology development to scale up production; identification and development of delivery infrastructure to transport, store, and distribute clean hydrogen for end-use applications, and stimulating market demand to accelerate trade in clean hydrogen in the Indo-Pacific region.
- Enhancing climate adaption, resilience and adaption across the Indo-Pacific region: This includes Quad countries convening a Climate and Information Services Task Force and building a new technical facility through the Coalition for Disaster Resilient Infrastructure that will provide technical assistance in small island developing states.

[Source: Joint Statement from Quad Leaders 24/09/2021; Factsheet Quad Leaders Summit]

## In Brief | The SMH reports that Norway's Labor Party is set to push Norges Bank Investment Management which owns 1.5% of the world's stocks, to commit to achieving net zero emissions across its portfolio by 2050

[Source: The SMH 27/09/2021]

## In Brief | ISO commits to integrating climate considerations into all future standards to accelerate the achievement of climate goals: The London Declaration commits signatories to embed climate considerations into every new standard that is created and to retrospectively add these requirements into existing standards as they are revised

[Sources: British Standards Institution media release 24/09/2021]

## Other Developments

### AHRC report identifies significant gaps in corporate accountability for human rights impacts

- June 2021 marked the ten year anniversary of the introduction of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in Australia. The Australian Human Rights Commission (AHRC) and the Australian Human Rights Institute at UNSW Sydney have released a [report](#) analysing the implementation of the UNGPs in Australia.
- The report analyses progress and flags gaps around UNGP implementation in six focus areas: 1) combatting modern slavery; 2) embedding human rights due diligence into business practice; 3) respecting the land rights of Aboriginal and Torres Strait Islander peoples; 4) addressing the adverse human rights impacts of climate change; 5) leveraging the role of institutional investors; and 6) ensuring access to remedy for victims.
- The headline conclusion is that action is required by government, businesses and institutional investors to prevent and address business-related human rights harms. For example, the report flags that more action is required to address the risk of labour exploitation in supply chains, and achieve a shift in practices, noting that disclosure alone is unlikely to achieve this.

### Recommendations

The report includes a number of recommendations to address deficiencies across each of the six focus areas including (among others) for the government to:

- strengthen the enforcement framework of the Modern Slavery Act 2018 (Cth) to 'ensure substantive compliance with the purpose of the law, including the establishment of an Independent Anti-Slavery Commissioner and a national compensation scheme for victim'
- legislate 'mandatory human rights due diligence by companies including the need to adhere to the principle of free, prior and informed consent'
- 'meaningfully incorporating the principle of free, prior and informed consent into the Native Title Act 1993 (Cth)'
- 'formally committing to reduce economy-wide emissions to net-zero by 2050' as well as to a more ambitious 2030 emissions reduction target; putting in place the funding and policy infrastructure needed to support business to contribute to meeting these targets and to facilitate an orderly and just transition

The report also includes a number of recommendations aimed at businesses and institutional investors including that institutional investors should 'embed in their human rights due diligence processes consideration and engagement' on key issues eg labour exploitation and modern slavery risks; adverse-related human rights impacts; just transition to a net zero economy by 2050; and respect the rights of Aboriginal and Torres Strait Islander peoples.

[Source: At the crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia]

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