



Governance News

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

16 February 2022

Contents

Meetings and Proxy Advisers	4
Top Story A welcome development: Bill to permanently modernise meeting and execution requirements passes both Houses	4
Virtual meetings: Minor changes to Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022	7
It never happened: Treasurer's proxy advice reforms disallowed	8
In Brief ASIC has announced that it prosecuted seven companies between 1 July 2021 and 31 December 2021, for failing to comply with their obligations to hold AGMs and lodge financial reports within the required timeframes. The regulator has cautioned that it 'will continue to prosecute companies that systemically fail to comply'	8
Shareholder Activism	9
Shareholder ESG resolutions in Australia: Insights from Glass Lewis	9
'Capital protection' resolutions filed at Santos and Woodside for a second year running	10
AGL has announced accelerated timeframes for the closure of coal power stations, ACCR says the timeframes are still not Paris aligned	10
Alphabet seeks to exclude nine separate shareholder proposals ahead of its 2022 AGM	11
Institutional Investors and Stewardship	13
Engagement not 'blanket divestment': Canada's largest pension fund commits to transition its portfolio to net zero across all scopes by 2050	13
NYS pension fund to divest 50% of its shale companies on climate grounds, flags plans to review transition plans of its oil and gas companies.....	13
Engagement has failed? Market Forces pushes for funds to 'divest all fossil fuel companies that cannot or will not align with the climate goals of the Paris Agreement'	13
Regulators	15
ASIC flags 'climate, cybersecurity and crypto' as continuing areas of focus heading into 2022	15
FDIC flags climate risk as a top priority for 2022	16
BoE launches second phase of climate stress testing Biennial Exploratory Scenario exercise	16
Financial Services	17
Top Story One step closer to reforms and penalties for unfair contract terms.....	17
Top Story Hayne implementation: Senate Committee report endorses the FAR and CSLR Bills	17
Hayne implementation: The government has appointed 31 part time members of the Financial Services and Credit Panel	19
Compensation paid/offered for financial advice related misconduct reaches \$3.15bn.....	19
CCIV/Retirement Income Covenant Bill passes both Houses	19
Statutory review of the operation of the CDR to be completed 'in July 2022'	20
\$450 SG income threshold abolished: Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Bill 2021 has passed both Houses.....	20
Accounting and Audit	21
In Brief The UK Financial Reporting Council has released new guidance for auditors on meeting their responsibilities under ISA (UK) 72 following the introduction by the Financial Conduct Authority of TCFD aligned	



climate disclosure requirements for listed companies. The guidance also touches on auditor's responsibilities under ISA (UK) 720 in respect of the company's Streamlined Energy and Carbon Reporting disclosures.....	21
Insolvency and Reconstruction	21
ASIC prosecuted 104 people in H2 2021 for failing to assist registered liquidators in their investigations	21
Risk Management	22
Culture	22
Implementation of the Respect@Work recommendations: New consultation launched	22
Parliamentary Workplace Reform (Set the Standard Measures No 1) Bill 2022 passes both Houses	23
SEC seeks feedback on proposed changes to whistleblower rules	24
In Brief Rio Tinto has announced that it has reached agreement with the Yinhawangka Aboriginal Corporation on a new co-designed management plan to ensure the protection of significant social and cultural heritage values as part of Rio Tinto's proposed development of the Western Range iron ore project in the Pilbara. Rio Tinto flags that this marks the first time that the company and Yinhawangka have jointly developed a plan of this type.....	24
In Brief Glencore has indicated that it expects that investigations by the UK, US and Brazilian regulators will be resolved in 2022 at an (estimated) cost of \$1.5bn. The company states that the US resolutions are 'expected to cover separate investigations into bribery and market manipulation. The resolution of the other investigations into the Group is not included within this provision and they remain ongoing'	24
Climate	25
Labor controlled Senate Committee recommends that the government 'consider reviewing the benefits of the oil and gas industry'.....	25
New fossil fuels Bill introduced: Greens Bill would halt the extraction, processing and export of coal, gas and oil	26
Other News	27
2021 foreign investment reforms: Treasury evaluation report released, consultations on possible enhancements to the regime launched	27

Meetings and Proxy Advisers

Top Story | A welcome development: Bill to permanently modernise meeting and execution requirements passes both Houses

The Bill to enact long-awaited permanent reforms to meeting, communication and execution requirements under the Corporations Act 2001 (Cth) has passed both Houses. We provide a snapshot of the key takeaways and how the changes differ from the temporary measures currently in place.

Key Takeouts

- [Temporary measures \(summarised\)](#) enabling companies to use technology to meet regulatory requirements under the Corporations Act 2001 (Cth) around convening meetings, distributing meeting related materials and executing documents took effect from 14 August 2021 and will remain in place until 31 March 2022.
- A Bill to introduce permanent reform - [Corporations Amendment \(Meetings and Documents\) Bill 2021](#) (Bill) - passed both Houses of Parliament on 10 February 2022 providing a welcome measure of certainty.
- Importantly, these permanent changes are not identical to the temporary measures now in place.
- Permanent changes to meeting requirements are set to take effect from 1 April 2022 (immediately after the temporary measures expire). Changes to electronic execution requirements will come into effect after the Bill receives Assent.

Overview

The [Corporations Amendment \(Meetings and Documents\) Bill 2021](#) (Bill) passed both Houses on 10 February 2022. The long-awaited Bill makes permanent changes to existing requirements under the Corporations Act 2001 (Cth) (the Corporations Act) that will enable companies and registered schemes to use technology to hold meetings, execute company documents, and sign and distribute meetings-related documents.

Importantly, the changes introduced by the Bill are not identical to the temporary measures (introduced by [Treasury Laws Amendment \(2021 Measures No. 1\) Act 2021 \(summarised\)](#) now in place, which are set to expire on 31 March 2022.

Key Points

'Technology neutral' execution

The changes introduced by the Bill will give companies the option of executing certain documents electronically and remove ambiguity around this process.

The changes in Schedule 1 (Division 1 of Part 1.2AA) set out the requirements for how company documents (including deeds), and meeting related documents can be validly executed in a 'technology neutral manner'.

The Bill also amends existing requirements in ss 126 and 127 of the Corporations Act to make clear that documents will be able to be validly executed in accordance with the changes introduced by Division 1 of Part 1.2AA.

Other key changes to note include the following.

- Amendments to s127 of the Corporations Act which will mean that proprietary companies with a sole director and no company secretary will be able to use the statutory document execution mechanisms (which is currently not the case).
- Amendments to s126 of the Corporations Act which will permanently enable agents to make, vary, ratify or discharge contracts and execute documents (including deeds) on behalf of companies. There is no requirement for the agent to be appointed by deed.

Distribution of meeting-related documents to members

- The changes in the Bill will make permanent the temporary changes in Treasury Laws Amendment (2021 Measures No. 1) Act 2021 relating to distribution of meeting-related documents. That is, changes to permanently enable any documents relating to meetings to be signed and given electronically (regardless of the format in which the meeting will be held).



- Importantly, the Bill will enable members to elect to receive documents in their preferred format – ie to elect to receive documents electronically or to receive physical copies or (or to elect not to be sent an annual report or any document prescribed in the regulations).
- The Bill also introduces a requirement for members to be notified of their right to elect to receive a document electronically or in physical form 'at least once' each financial year and for entities to make the notice 'readily available on a website' (s110K).
- The sender will be required to take reasonable steps to provide the member with the document or class of documents in the requested form (unless ASIC exercises its emergency powers under s1345 of [Treasury Laws Amendment \(2021 Measures No. 1\) Act 2021](#) to grant relief).

Elections made before commencement of the Bill

- Sections 1687 D-H of the Bill make clear that where members that have notified a company or responsible entity that they wish to receive documents in physical or electronic form, or do not wish to be sent a copy of an annual report, prior to the commencement of the Schedule 2, there is no requirement for them to re-make their request – that is, their request will continue to have effect after the commencement of Schedule 2.
- If a member made a request to receive a full financial report prior to commencement of Schedule 2 then that request will also continue to have effect after commencement of the Schedule.

Electronic meetings: Hybrid yes, virtual (it depends...)

The changes introduced by the Bill will give companies and registered schemes the option of holding meetings in hybrid format. However, unlike the temporary measures now in place until 31 March 2022, they will only have the option of holding wholly virtual meetings if they are expressly permitted to do so under their constitutions (ss 249R and 252P). This will mean that in most cases, companies and registered schemes will need to seek shareholder approval to amend their constitutions.

The Bill also clarifies (s111L) that companies registered as bodies corporate under the Australian Charities and Not-for-profits Commission Act 2012 (Cth) may hold physical or hybrid meetings (or wholly virtual meetings, if permitted to do so under their constitutions).

[Note: It is worth noting that emergency powers introduced by [Treasury Laws Amendment \(2021 Measures No. 1\) Act 2021](#) (summarised) enable ASIC to grant relief (eg by enabling companies to hold wholly virtual meetings) in exceptional circumstances.]

A reasonable opportunity to participate

Regardless of the format in which the meeting is held, the Bill makes clear that 'members as a whole' must be given a 'reasonable opportunity to participate'. Section 249S of the Bill sets out what this may entail.

Among other things, companies will need to ensure that the technology used is 'reasonable' and:

'allow the members who are entitled to attend the meeting, and do attend the meeting using that virtual meeting technology, as a whole, to exercise orally and in writing any rights of those members to ask questions and make comments'.

Requests for independent reports on polls

The Bill includes a new measure allowing a member or group of members of a company or registered scheme (with at least 5% of the voting power) to request to have an independent person appointed to observe and/or prepare a report on a poll conducted at a members meeting.

The company or responsible entity of a registered scheme will be required to take reasonable steps to appoint an independent person after receiving such a request.

The revised explanatory memorandum observes that:

'It is expected that where a company or registered scheme has an independent person observe and/or scrutinise and prepare a report on polls as part of their standard meeting practices this will satisfy these requirements and there will be no additional burden on these entities'.

Substantive resolutions to be decided by a poll

Votes on resolutions which are set-out in the notice of a meeting of members of a listed company will be required to be decided by a poll (not a show of hands). A listed company's constitution will not be capable of providing otherwise.

The justification given in the explanatory memorandum is that

'these resolutions are usually substantive in nature and polls are more accurate, reliable and better reflects the voting power of all shareholders than votes which are conducted by a show of hands. A resolution will not be on a meeting notice paper if it is procedural in nature'.

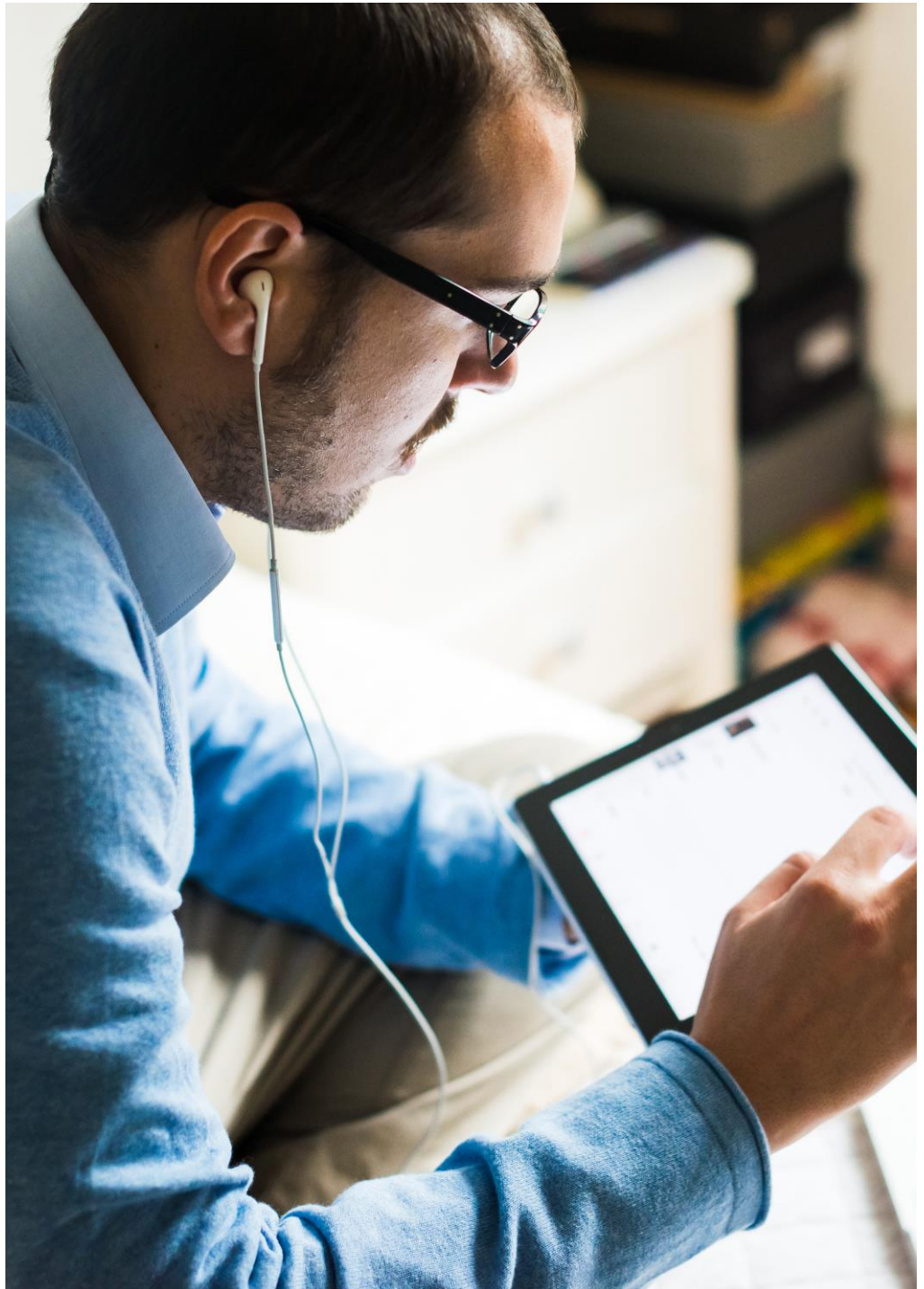
Notice of meetings

- The Bill amends section 249J to ensure that members can be notified of meetings electronically.
- The Bill also updates the rules relating to when notices of meetings are taken to be received to state that electronic notices are taken to be received on the business day after they are sent.

Planned Reviews of changes to meeting requirements

Changes enabling virtual meetings will be rolled back in two years if certain requirements are not met:

- Section 1687J of the Bill requires that an independent review of the operation of both the temporary measures introduced by Schedule 1 to the Treasury Laws Amendment (2021 Measures No. 1) Act 2021 (which remain in effect until 31 March 2022) and the changes introduced by the Bill be conducted no later than the 'earliest practicable day after the end of 2 years after the commencement of Schedule 1 to the Corporations Amendment (Meetings and Documents) Act 2021'.
- A report on the review will need to be tabled in each House of Parliament within 15 sitting days after the report is provided to the Minister.
- If this does occur within this timeframe, then s1687K provides that the changes enabling virtual meetings introduced by the Bill will (ie sections 249R(c) and 252P(c)) will cease to apply.



Senator Jane Hume has [also indicated](#) that the government intends to conduct a separate '12-month opt-in review' of AGMs. Ms Hume said that the aim is to:

'encourage companies and shareholders to engage with technology with a view to considering whether future permanent reforms are needed to further support companies to effectively use technology to engage with their members'.

Senator Hume makes clear that these reviews are intended to allay concerns about the potential for changes to meeting requirements, and in particular changes enabling virtual meetings, to adversely impact shareholders.

Timing

- Changes to execution requirements introduced by Schedule 1 will apply to documents which are signed or executed 'on or after the day' the Bill commences. The Bill is set to commence the day after Assent is given.
- The amendments in Schedule 2 applying to meetings and meeting-related documents apply to meetings and to meeting-related documents sent on or after 1 April 2022 (ie the day after temporary measures now in place, cease to have effect).

[Source: Corporations Amendment (Meetings and Documents) Bill 2021]

Virtual meetings: Minor changes to Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022

The [Insolvency Practice Rules \(Corporations\) Amendment \(Virtual Meetings and Electronic Communication\) Rules 2022](#) (2022 Rules) were registered on 10 February 2022.

According to the [Explanatory Statement](#) the purpose 2022 Rules is to 'make minor amendments to the Insolvency Practice Rules to ensure the reforms relating to virtual meetings undertaken as part of the 2020 corporate insolvency reforms operate as intended'.

These changes include the following (among others).

- New definition of 'show of hands' clarifies that votes at meetings may be taken by a show of hands using any electronic mechanism eg an attendee clicking a 'raise hand' button. The justification given in the Explanatory Statement is that this change is necessary to 'ensure that a show of hands may be used at a virtual meeting as an alternative to a poll'.
- Part 2 Committee meetings:
 - Voting: The 2022 Rules make clear that where virtual meeting technology is used in holding the meeting, each member must be given the opportunity to participate in the vote in real time.
 - Tabling of documents: Changes introduced by the 2022 Rules enable documents to be tabled at meetings if they are made accessible to the attendees in any form eg by sharing a screen during a virtual meeting.
 - Keeping minutes: Changes introduced by the 2022 Rules remove the requirement to keep the minutes at a particular place, where they may be open for inspection.
- General rules for meetings:
 - Place of a meeting (virtual meetings): The 2022 Rules allow the convenor of the meeting to nominate a physical address in Australia in the notice of the meeting.
 - Notice of meeting (virtual meetings): The 2022 Rules introduce a requirement for the notice of meeting lodged with ASIC to include a statement that the persons entitled to attend a virtual meeting have been given sufficient information to attend the meeting.
 - Voting (virtual meeting):
 - The 2022 Rules, the convenor of a virtual meeting must specify in the notice of the meeting whether the vote must be taken on a poll. If the notice does not require votes to be taken on a poll, votes must be taken on a show of hands unless a poll is requested (a show of hands may be conducted using electronic means).
 - Under the 2022 Rules, persons entitled to vote at the meeting must in all cases be given the opportunity to participate in the vote in real time. The convenor of the meeting may also give attendees the opportunity to record a vote in advance of the meeting (at the election of the voter).
 - Tabling of documents: The 2022 Rules provides greater flexibility and parallel the new rule that applies to Part 2 committee meetings ie changes introduced by the 2022 Rules enable documents to be tabled at

meetings if they are made accessible to the attendees in any form eg by sharing a screen during a virtual meeting.

Timing

The 2022 Rules apply to virtual meetings held on or after the day the Rules commence (11 February 2022).

[Source: Insolvency Practice Rules (Corporations) Amendment (Virtual Meetings and Electronic Communication) Rules 2022]

It never happened: Treasurer's proxy advice reforms disallowed

The reforms

Broadly, the [Treasury Laws Amendment \(Greater Transparency of Proxy Advice\) Regulations 2021](#) (Regulations) extended Australian Financial Services (AFS) licensing requirements to a broader range of proxy adviser activities and introduced new requirements for:

- proxy advisers to provide entities that are the subject of proxy advice with a copy of the advice, on the same day it is provided to the client.
- proxy advisers to be independent of their clients.

The Regulations also amended the Superannuation Industry (Supervision) Regulations 1994 (SIS Regulations) to introduce a new requirement for Registrable Superannuation Entity (RSE) licensees to make publicly available on their website a detailed summary of how they have exercised their voting rights.

Reforms disallowed

- On 10 February 2022, Senator Patrick together with Senator McKim, [succeeded in moving a motion](#) in the senate to disallow the regulations (by 29 votes to 25 votes). The effect of this is that the regulations are no longer in force and cease to apply.
- This development follows concerns raised by the Senate Standing Committee for the Scrutiny of Delegated Legislation about various aspects of the reforms, including that in light of the significance of the reforms and their likely impact on industry, it would have been preferable for them to be introduced through primary legislation rather than through regulation. A concern that has previously been raised by industry (eg [ACSI](#)). You can read more about the concerns Committee's concerns and the background to the reforms [here](#).

Industry has welcomed the disallowance of the reforms

Ownership Matters [tweeted](#):

'Vale "Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021" a.k.a @JoshFrydenberg's Pyongyang Proxy Laws - we hardly knew you. If anyone is interested in the film rights - it's a bad movie with a magnificent ending....Now it's back to work'.

The [Australian Council of Institutional Investors](#) (ACSI) has similarly welcomed the disallowance of the reforms stating:

'The regulations were rushed through without parliamentary scrutiny and with no justification, rationale or harm identified. Proxy advisers faced more onerous red tape and fines of up to \$11 million for small administrative errors, and unprecedented rules regulating ownership of advisers. We are pleased to see the Senate voted to ensure the system that has been working well to deliver quality advice that supports investors and millions superannuation fund members is maintained'.

[Sources: Senate Journals 10/02/2022; Notification of Disallowance of the Treasury Laws Amendment (Greater Transparency of Proxy Advice) Regulations 2021]

In Brief | ASIC has announced that it prosecuted seven companies between 1 July 2021 and 31 December 2021, for failing to comply with their obligations to hold AGMs and lodge financial reports within the required timeframes. The regulator has cautioned that it 'will continue to prosecute companies that systemically fail to comply'

[Source: ASIC media release 16/02/2022]



Shareholder Activism

Shareholder ESG resolutions in Australia: Insights from Glass Lewis

Key Takeouts

- According to data from Glass Lewis, the number of shareholder ESG resolutions has more than doubled since 2017 and the level of shareholder support has also surged
- Glass Lewis identifies lack of director independence, and to a lesser extent, lack of board diversity as key drivers of protest votes against individual directors in 2021. Interestingly, concern over executive remuneration was not identified as a key driver of protest votes. Concern over ESG failures was also not a key driver (with one notable exception)

CGI Glass Lewis has released its [2021 Australian Proxy Season Review](#) and an accompanying '[proxy stats](#)' paper. Among other things, the review highlights the continued uptick in the number and level of support for shareholder ESG resolutions in Australia in recent years.

Some Key Takeaways

According to Glass Lewis:

- Over the period 2017 to 2021, the number of shareholder ESG resolutions (filed at ASX 300 companies) has more than doubled in recent years from 17 in 2017 to 41 in 2021.
- The average level of support for shareholder ESG resolutions has also steadily increased from just 4.9% average support in 2017 to 22.5% in 2021.
- Importantly, shareholder ESG resolutions with board backing received a significantly higher level of support - 94.8% support.
- It's perhaps also noteworthy that shareholder resolutions in Australia dealing with a substantive ESG issue (eg calling on a company to set and disclose Paris-aligned emissions reduction targets) are typically accompanied by and contingent on the passage of an accompanying, separate constitutional amendment. The level of support for these special resolutions to amend companies' constitutions appears to be very significantly lower than the level of support for substantive ESG shareholder resolutions. For example, according to Glass Lewis' data, the highest level of support for a special resolution put to a vote in 2021 at an ASX 300 AGM was 11.83% (vs a high of over 99% support for two substantive resolutions).

Glass Lewis identifies indigenous rights and climate change were the two key areas of shareholder concern

- [Page 23](#) of the 'stats' report is a table summarising the ESG shareholder votes filed at ASX 300 companies in 2021 and the voting outcome.
- Glass Lewis considers that broadly, the shareholder ESG proposals that went to a vote in 2021 were focussed on two key issues: Climate Change and Indigenous Rights, with the level of support for climate-related resolutions overall much higher than the level of support for resolutions concerned with the protection of Indigenous Rights.

Emerging trend: Say on climate

- In 2021 BHP became the first Australian listed company to give its shareholders and opportunity to express their views on its climate transition action plan (CTAP). This 'say on climate' resolution received the support of the majority of shareholders (84.9% supported the management proposed say on climate resolution). According to Glass Lewis, this result was consistent with Say on Climate votes at other companies in 2021.
- Looking ahead to the 2022 AGM season, Glass Lewis notes that a number of other companies including Rio Tinto, Santos, Woodside Petroleum, AGL (both AGL Australia and Accel Energy if demerged), Origin Energy and South 32 will offer their shareholders a similar chance to vote on their transition plans. Glass Lewis suggests that shareholders should 'watch this space for the year ahead'.

Votes against director elections/re-elections

- According to Glass Lewis, across ASX 300 companies there were 16 'significant' votes against director candidates – ie more than 25% of votes against the election of an individual director nominee – in 2021, well down on the 24 'significant' against votes in 2020.
- Notably, six of these 'significant' against votes were directed at external director nominees that did not have board endorsement. If these candidates are excluded, there were 10 'significant' against votes against board endorsed director candidates in 2021 (vs 15 in 2020).
- Only one board-endorsed incumbent director failed to be reelected in 2021 (receiving 56% of votes against). Glass Lewis attributes the result in this case shareholders concern about the perceived lack of independence on the company's board.
- Interestingly, Glass Lewis does not consider that concern over executive remuneration was a driver of protest votes in 2021 (despite the pandemic). Rather, independence concerns, overboarding concerns, and lack of board diversity were identified as top drivers of shareholder protests. Perceived ESG failure/lack of progress was also not identified as a key driver of protest votes against directors (with one notable exception).

[Sources: Glass Lewis Proxy Season Review Australia 2021, Glass Lewis Report Proxy Stats Australia 2021]

'Capital protection' resolutions filed at Santos and Woodside for a second year running

- Market Forces has filed two separate 'wind down' resolutions at Santos and Woodside calling on each of the companies to report annually on their 'capital allocation to oil and gas assets will align with a scenario in which global energy emissions reach net zero by 2050, facilitating the efficient managing down of these assets'. The full text of each resolutions is here: [Santos](#), [Woodside](#)
- Similar resolutions were filed by the group at both companies in 2021 (the resolutions received 19% support at Woodside and 13% support at Santos).
- Market Forces has again filed resolutions at the companies because it [considers](#) that neither company has acted to align their strategy/operations with the goals of the Paris Agreement, despite having set their own net zero targets. The group also remains concerned that Scope 3 emissions are not covered by the targets set. Market Forces states:

'The need for these resolutions has only increased over the past year, with both companies pursuing mergers to drastically increase their oil and gas production capacity, and moving ahead with billions of dollars worth of new projects that are incompatible with the Paris Agreement's climate goals and International Energy Agency's Net Zero Emissions by 2050 scenario. Woodside and Santos have not only rejected investors' demands for alignment with global climate goals, they've actually moved in the complete opposite direction.'

- Market Forces considers that both companies' expansion plans 'threaten to waste billions in investor capital on projects that would be stranded by the low-carbon transition that's already underway'.
- The group has called on investors to support the resolutions on the basis that they 'present a necessary opportunity for investors to live up to their own climate commitments, while protecting their capital and ensuring employee transition and asset decommissioning obligations are adequately planned and resourced.'

[Sources: Market Forces media release 11/02/2022]

AGL has announced accelerated timeframes for the closure of coal power stations, ACCR says the timeframes are still not Paris aligned

Accelerated closure dates for coal power stations

AGL has [announced](#) that:

- 'AGL Australia will be carbon neutral for all Scope 1 and 2 emissions upon listing with a pathway to net zero for Scope 1, 2 and 3 by 2040 with a 50 percent reduction on FY19 levels by 2030. AGL Australia will be net zero emissions across Scopes 1, 2 and 3 by 2040'
- Accel Energy will bring forward the planned closure dates for coal power stations Bayswater to 2033 (from 2035) and Loy Yang A to 2045 (2048). The Liddell coal power station is planned to close by April 2023;



Not Paris-aligned?

- AGL's announcement follows 53% (proxy) vote on an ACCR coordinated 2021 shareholder resolution calling on AGL to set Paris-aligned emissions reduction targets for both entities (note the resolution failed to be carried as it was contingent on the passage of a special resolution to amend the constitution).
- ACCR has issued a [statement](#) criticising the new coal-closure timelines on the basis that it considers the accelerated timeframes remain inconsistent with achieving the goals of the Paris Agreement.
- The ACCR has called on AGL shareholders to push for board change if AGL fails to bring the coal closure dates forward. ACCR states:

'If AGL fails to deliver Paris-aligned targets for both entities by the time of the demerger vote (expected late Q2 2022), then shareholders must seek change at the highest level: the board'

[Sources: ACCR media release 10/02/2022; AGL media release 1H2022 results announcement: 10/02/2022]

Alphabet seeks to exclude nine separate shareholder proposals ahead of its 2022 AGM

Alphabet [has applied to the Securities and Exchange Commission](#) (SEC) seeking confirmation that the regulator will not recommend any enforcement action if the company were to omit nine separate shareholder proposals from its proxy statement and from consideration at its 2022 AGM. For clarity, if the SEC agrees, it would mean that the shareholder proposals will not go to the AGM.

The shareholder proposals touch on a range of concerns including (among others) board composition and environmental sustainability.

As yet, SEC has not published a response to Alphabet's requests.

Board composition

- **Board diversity shareholder proposal:**
 - One of the proposals (filed by Arjuna Capital) calls for Alphabet to report annually on the policies and practices it has implemented to 'help ensure its elected Board of Directors attains racial and gender representation that is better aligned with the demographics of its customers and/or regions in which it operates'.
 - Alphabet [submits](#) that it is justified in excluding the proposal on the basis that it has already been 'substantially implemented'. Alphabet writes:

'The Company has substantially implemented the Proposal's essential objective of using public disclosures to promote Board diversity and a "Board of Directors with racial and gender composition reflective of [the Company's] customer base" by collecting and publishing information on the diversity of its Board, as well as through the provisions of various of its publicly available corporate governance documents'.
- **Non-management employee board candidates:**
 - A separate shareholder proposal calls on the company to 'adopt a policy ('Policy') requiring that the initial list of candidates from which new director nominees are chosen by the Nominations and Corporate Governance Committee include (but need not be limited to) non-management employees. The Policy should provide that any third-party consultant asked to furnish an initial list will be requested to include such candidates'.
 - Alphabet [submits](#) that it is justified in excluding the proposal on the basis that it deals with substantially the same subject matter as a 2019 proposal filed by the same proponents (under their previous name) which failed to achieve the support necessary for resubmission (ie the proposal received 1.76% support, well short of the 5% required in order for a proposal that has already been voted on once within a certain timeframe to be again put to meeting).

Sustainability

- Another separate shareholder proposal calls on the Alphabet board to establish a dedicated board committee on 'environmental sustainability to oversee and review policies and provide guidance on matters relating to environmental sustainability'.
- Alphabet [submits](#) that it is justified in omitting the proposal for two main reasons.

- In the first place, Alphabet submits that it is justified on the basis that the resolution has already been substantially implemented - despite having no board-level sustainability Committee in place – because the board 'currently provides robust oversight of matters related to environmental, social and governance issues'.
- In the second place, Alphabet submits that it is justified because the proposal concerns Alphabet's ordinary business operations and it 'seeks to micromanage' the company. Alphabet states:

'The Proposal here attempts to direct too closely the activities and judgment of the Board by requesting that the Board "create a board committee on environmental sustainability to oversee and review policies and provide guidance on matters relating to environmental sustainability." The Staff has consistently allowed the exclusion of proposals requesting formation of a committee of the board of directors'.

[Sources: SEC: Incoming No-Action Requests Under Exchange Act Rule 14a-8 Requests from Alphabet Inc 01/02/2022]



Institutional Investors and Stewardship

Engagement not 'blanket divestment': Canada's largest pension fund commits to transition its portfolio to net zero across all scopes by 2050

- **Net zero commitment:** Canadian Pension Plan Investment Board (CPP Investments) has [announced plans](#) to transition its portfolio and operations to be net zero (across all scopes) by 2050. The fund is aiming to achieve carbon neutrality (for internal operations) by the end of 2023.
- **Engagement not divestment:** CPP Investments makes clear that it does not intend to achieve this goal through 'blanket divestment' but through engagement – the fund will 'continue to invest in and exert our influence in the whole economy transition as active investors'.
- **Building on its existing approach:** The fund states that the transition will be accomplished in line with its existing Climate Change Principles which require that it:
 - 'Invest for a whole economy transition;
 - Evolve our strategy as transition pathways emerge and global standards for decarbonisation materialise;
 - Exert influence to create value and mitigate risk;
 - Support a responsible transition based on our Investment Beliefs and expertise; and
 - Report on our actions, their impacts and our portfolio emissions'.
- **Increasing green investments:** The fund flags that this will entail the fund increasing its current investments in green and transition assets from \$67 billion to 'at least \$130 billion by 2030'.

CPP Investments Head of Real Assets and Chief Sustainability Officer Deborah Orida commented that supporting the transition as outlined, is a necessary step:

'We believe the performance of our portfolio and the generation of long-term investment returns relies upon our ability to adapt to a global economy that is moving toward net zero.'

[Source: CPP Investments media release 10/02/2022]

NYS pension fund to divest 50% of its shale companies on climate grounds, flags plans to review transition plans of its oil and gas companies

- The New York State Common Retirement Fund (fund) has [announced that](#), in line with its net zero commitment – the fund has adopted a goal to transition its portfolio to net zero greenhouse gas emissions by 2040 – it will divest more than \$238 million in public equity and debt securities issued by 21 shale oil and gas producing companies, which it considers 'have failed to demonstrate they are prepared for the transition to a low-carbon economy'.
- The fund will retain the remaining 21 shale companies in its portfolio.
- Part of the fund's broader transition plan:
 - According to the fund's statement, the decision to divest was made following a review of the transition strategies of 42 shale companies. This review in turn, is part of the fund's broader review of 'the transition readiness of energy sector investments that face significant climate risk'.
 - A previous review of the oil sands and coal companies led to the fund's divestment from 34 firms whose transition plan were also considered not to meet the fund's expectations.
- More divestments possible: The fund will next evaluate the transition plans of integrated oil and gas companies.

[Source: NYS Comptroller Thomas P DiNapoli media release 09/02/2022]

Engagement has failed? Market Forces pushes for funds to 'divest all fossil fuel companies that cannot or will not align with the climate goals of the Paris Agreement'

[Research from Market Forces](#) into the actions being taken by 40 Australian super funds to divest fossil fuel companies – coal, oil or gas companies – and/or disclose their plans for doing so, has identified that 'every major super fund in the country continues to undermine the Paris Agreement and net zero by 2050 climate goals by investing in companies expanding the scale of the fossil fuel industry' (though some funds are making progress).

For context, Market Forces takes as its starting point the fact that 28 of the 40 funds reviewed have expressed support for the goals of the Paris Agreement or have made a net zero commitment. Market Forces considers divestment of fossil fuel companies (and/or disclosure by funds of their divestment strategy) a necessary step in living up to these commitments.

According to Market Forces' analysis:

- 26 of 40 funds reviewed have not publicly disclosed any plan to divest or exclude coal, oil or gas companies
- 14 funds have either substantially divested from/have some form of exclusion on, or have plans to phase out investments in thermal coal companies and 5 funds have done the same with respect to gas producers
- 2 funds have disclosed that they have reduced exposure to oil and gas companies through the adoption of low carbon approaches.

However, Market Forces found that they have not disclosed the specific impact this on oil and gas investments



Call to action

Market Forces has [called on super fund members](#) to write to their funds to request confirmation that their fund will 'divest all fossil fuel companies that cannot or will not align with the climate goals of the Paris Agreement' on the basis that engagement with companies has proven unsuccessful. The template states:

'Before you respond to me with the usual line, "we prefer to engage with companies over their climate policies, rather than divest," know this: your engagement has failed. [Certain] Companies...are still pursuing massive new fossil fuel projects consistent with the failure of the Paris Agreement'.

[Sources: Market Forces media release 15/02/2022; Market Forces Research: Super Slow on Climate and call to action]



Regulators

ASIC flags 'climate, cybersecurity and crypto' as continuing areas of focus heading into 2022

In his [opening statement](#) to the Parliamentary Joint Committee on Corporations and Financial Services, Australian Securities and Investments Commission (ASIC) Chair Joe Longo provided a brief summary of 'key parts' of ASIC's recent work and briefly touched on the regulator's key priorities for the coming year.

Key Takeaways

Enforcement

Hayne Commission-related enforcement action:

- Mr Longo said that ASIC completed its Hayne-related investigations between October and December 2021.
- Of the 13 referrals to ASIC:
 - five have concluded with no further action
 - five matters have received judgement (the Courts have ordered a combined total in \$79m in civil penalties)
 - three matters remain on foot: one matter is in civil litigation; two matters are 'under prosecution by the CDPP with charges laid'
- Hayne case studies: Mr Longo said that ASIC has also 'successfully investigated and litigated a large number of the case studies explored during the Royal Commission'.

Update on the work of ASIC's Regulatory Efficiency Unit

- Mr Longo also provided an update on the work Regulatory Efficiency Unit (REU) which was established in November 2021 to 'promote better regulation by removing unnecessary frictions and making it easier for business to get things done'.
- Mr Longo said that ASIC has been meeting with a wide range of 'interested stakeholders' who engage with ASIC, with over 70 external stakeholders consulted to date.
- Mr Longo said that the REU plans to 'identify a set of initiatives this year that aim to improve the efficiency of ASIC's interactions with its regulated population' as well as assisting the Financial Regulator Assessment Authority in its work.

Supporting industry in meeting new requirements

Mr Longo listed a number of examples of the work ASIC is doing to support industry in implementing/complying with new requirements including in the areas of financial advice and superannuation.

Sterling collapse

- Mr Longo briefly commented on the release of the Senate Committee's report into the collapse of the Sterling Income Trust. He indicated that the regulator is 'considering the report findings and recommendations, in particular the two addressed to ASIC'.
- Mr Longo indicated that, ASIC is considering the Committee's recommendation that ASIC 'investigate and, if appropriate, commence legal proceedings against AFSL holders that are alleged to have breached section 917B of the Corporations Act but have not consented to participate in relevant AFCA processes'.
- With respect to the second recommendation directed to ASIC – that the regulator develop a framework to develop and promote greater awareness/understanding among retail investors and financial consumers in relation to buying financial products and services – Mr Longo noted that ASIC and the Treasury 'already invest a considerable amount in financial literacy and consumer awareness work, including through Moneysmart'. Mr Longo added that ASIC is reviewing the financial literacy material 'in light of the Committee's report, in particular in relation to supporting consumers having reasonable expectations of the regulatory regime and of ASIC'.

Outlook for 2022

- Mr Longo commented that 'ESG and Crypto and cyber-resilience have been three areas of focus that will no doubt remain of the highest order this year'.
- Mr Longo flagged that ASIC is currently preparing its strategic priorities for the coming financial year, having already released its Corporate Plan and published its Statement of Intent.
- Key identified the following as a 'continuing thread through our work at this time':
 - focus on raising awareness of new and continuing regulatory obligations
 - closely monitoring and engaging with the ASX on the CHESS replacement program (with the RBA, the Council of Financial Regulations (CFR) and ACCC)
 - focus on internal priorities such as 'digital uplift, improving our communication with stakeholders and other regulatory agencies, improving infrastructure and systems, better use of data and cyber resilience'.

[Source: ASIC Chair Joe Longo's Opening Statement to the Parliamentary Joint Committee on Corporations and Financial Services heading 11/02/2022]

FDIC flags climate risk as a top priority for 2022

- In a [statement](#) outlining the Federal Deposit Insurance Corporation's (FDIC) priorities for 2022, Acting Chair Martin J Gruenberg highlighted climate risk as a key focus area. Specifically, Mr Gruenberg said that:

'Addressing the financial risks that climate change poses to banking organisations and the financial system will also be a top priority of the FDIC. This will include seeking public comment on guidance designed to help banks prudently manage these risks, establishing an FDIC interdivisional, interdisciplinary working group on climate-related financial risks, and joining the international Network of Central Banks and Supervisors for Greening the Financial System'.

Other priorities for 2022 identified in the FDIC's statement include (among others):

- Evaluating the risks posed by crypto assets and the extent to which banks can 'safely engage in crypto asset related activities'. Mr Gruenberg said that 'to the extent such activities can be conducted in a safe and sound manner, the agencies will need to provide robust guidance to the banking industry on the management of prudential and consumer protection risks raised by crypto-asset activities'.
- Basel III Capital Rule: The FDIC will focus in particular on 'strengthening the capital requirements related to market risk, operational risk, and the risks associated with financial derivatives'.

[Source: FDIC media release 07/02/2022]

BoE launches second phase of climate stress testing Biennial Exploratory Scenario exercise

- The Bank of England has [launched](#) a second round of climate stress tests – the Biennial Exploratory Scenario Exercise (BES) - to better understand the financial risks posed by climate change for the UK's largest banks and insurers.
- Building on the first phase of the BES, participating banks and insurers have been asked to answer a 'small number of questions' about their strategic responses to the three scenarios already published as part of phase 1.
- The deadline for participants' second round submissions is 31 March 2022.
- The Bank expects to publish results from the Climate BES in May 2022.

[Source: Bank of England media release 09/02/2022]

Financial Services

Top Story | One step closer to reforms and penalties for unfair contract terms

The [Treasury Laws Amendment \(Enhancing Tax Integrity and Supporting Business Investment\) Bill 2022](#) (the Bill), has been introduced into the House of Representatives on 9 February 2022.

As foreshadowed in prior exposure draft legislation (Draft Legislation), the Bill proposes to strengthen and expand the unfair contract term (UCT) regime. Importantly, it includes the introduction of penalties to propose, apply or rely on an unfair term in applicable contracts and expansion of the UCT regime's scope.

MinterEllison has released an article providing insights into how the measures in the Bill would differ from current UCT laws (and from the draft legislation released in late 2021). You can access the full text [here](#).

Top Story | Hayne implementation: Senate Committee report endorses the FAR and CSLR Bills

Key Takeouts

- The senate committee inquiry into the Bills to establish the proposed Financial Accountability Regime (FAR) and the Compensation Scheme of Last Resort (CSLR) has recommended the passage of the Bills without amendment.
- Labor Committee members have separately recommended the government consider expanding the proposed CSLR to include managed investment schemes.
- The Bills are currently before the House of Representatives and have yet to pass the Senate.

Overview

On 25 November 2021, the Senate referred the provisions of the Bills to establish the proposed Financial Accountability Regime (FAR) and the proposed Compensation Scheme of Last Resort (CSLR) to the Economics Legislation Committee for inquiry and report by 15 February 2022.

The [Final Report](#) recommends the passage of all four Bills - [Financial Accountability Regime Bill 2021](#), [Financial Sector Reform \(Hayne Royal Commission Response No. 3\) Bill 2021](#), [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2021](#), and [Financial Services Compensation Scheme of Last Resort Levy Bill 2021](#) - without amendment.

According to the report, the 33 submissions received by the inquiry 'showed widespread support for the bills in a modified form'.

Stakeholder Views on the proposed FAR

- According to the report, the majority of submissions supported the policy intent of the FAR Bills to 'improve the operating culture' of banks, insurers and superannuation funds and to increase 'transparency and accountability, both in relation to prudential and conduct related matters'.
- Having said this, the report also flags that a number of submissions raised concerns about various aspects of the design of the proposed FAR regime. Key stakeholder concerns flagged in the report include:
 - queries around the rationale for establishing a new FAR regime (as opposed to simply extending the existing Banking Executive Accountability Regime (BEAR))
 - concerns about the proposed scope of the regime
 - concerns about the potential for the reforms (as currently drafted) to create uncertainty and lead to 'unintended consequences for related entities'
 - the perceived duplication of existing laws and obligations
 - the absence of civil penalties for individuals in the proposed FAR
 - concerns about the design/operation of proposed deferred remuneration requirements
 - the perceived lack of clarity around how joint administration of the proposed FAR by the regulators (ASIC and APRA) will work
 - concerns about the commencement date for the proposed FAR

- Another concern highlighted in the report, is the lack of certainty around accountable person roles and the fact that some elements of the proposed FAR are not contained in the primary legislation but will be prescribed in ministerial rules which are not yet available (eg details of the roles/responsibilities of accountable persons).
- On this last point, the Committee's view appears to be that the inclusion of this level of prescription/detail in the primary legislation is not desirable (See: [Chapter 2 of the report at paras 2.54-2.55](#)).
- Overall, the Committee declined to recommend any amendments to the Bill.

The proposed Compensation Scheme of Last Resort (CSLR) Bills

According to the report, there was also overall support for the introduction of a Compensation Scheme of Last Resort (CSLR) through the report flags that there were concerns raised in some submissions about the scope, design and funding model for the proposed scheme.

The report ultimately rejects these reservations, stating:

'The committee is of the view that the scheme, broader than initially envisaged by both the Ramsay Review and Royal Commission, is based on prior extensive evidence, consultation, and recommendations of the Royal Commission, which concluded that a targeted and scalable scheme covering financial advice was the most appropriate response. The committee believes that the proposed compensation cap and levy will ensure the long-term sustainability of the scheme. Importantly, that it correctly balances the liabilities for industry, the provision of just compensation to claimants from scheme contributors and, restoring consumer confidence in the financial services sector as a whole'.

Concerns were also raised about the fact that the regulations accompanying the Bills are not yet available, leading to uncertainty around implementation. The Committee's response to this can be summed up as follows:

'The committee notes that the accompanying regulations for the bills have not been published and this has meant that preparations for the possible implementation and compliance with the proposed legislative reforms are more difficult for interested stakeholders. However, the committee notes that the regulations will in due course be published, consulted on, and subject to parliamentary scrutiny in due course'.

Expansion of the proposed CSLR to include MIS

In separate [additional comments](#), Labor Committee members expressed support for the introduction of a CSLR, but expressed reservations about the 'narrow focus' of the proposed scheme in light of feedback from witnesses to the inquiry including representatives from CHOICE, the Financial Planning Association of Australia and the Self-Managed Super Fund Association.

Labor Committee members recommended that the government expand the scope of the proposed CSLR to include managed investment schemes (MIS). In their view, this is justified in order to avoid 'poor outcomes' as occurred for example, in the case of the collapse of the Sterling Group.

Labor Committee members did not offer any additional comments on the FAR Bills.

CHOICE has called on the government to prioritise the passage of the legislation

In a [statement](#), CHOICE welcomed the Committee's recommendation that the reforms be passed and expressed the hope that the Bills would be debated in the House of Representatives 'this week so that they can be passed in this term of parliament'.

On the CSLR, CHOICE also reiterated its view that the scope of the CSLR scheme should be expanded to include managed investment schemes.

[Sources: Senate Standing Committee on Economics Inquiry into the provisions of the Financial Accountability Regime Bill 2021 [Provisions] and Financial Services Compensation Scheme of Last Resort Levy Bill 2021 [Provisions] and related bills Final Report; CHOICE media release 15/02/2022]

Hayne implementation: The government has appointed 31 part time members of the Financial Services and Credit Panel

Context

- The [Financial Sector Reform \(Hayne Royal Commission Response – Better Advice\) Act 2021 \(Cth\)](#) establishes the Financial Services and Credit Panel (FSCP) within the Australian Securities and Investments Commission (ASIC) as the single disciplinary body for financial advisers from 1 January 2022.
- ASIC has responsibility for convening individual panels to consider disciplinary matters. Each panel must consist of a Chair (an ASIC staff member) and at least two other members (selected from a list of eligible persons appointed by the Minister).

31 Part-time FSCP member appointed

- Senator Jane Hume has [announced](#) that the government has appointed 31 part-time FSCP members.
- The newly appointed members are: Ms Shabnam Amirbeaggi, Ms Debra Anderson, Ms Julie-Anne Berry, Ms Gabrielle Bouffler, Ms Kathryn Brown, Ms Donna Caird, Mr Ian Chambers, Mr James Cotis, Mr Donald Crellin, Mr Gary Croker, Mr Bruce Debenham, Mr Hamish Dee, Mr Gary Deegan, Dr Jennifer Diggle, Mr Bradley Fox, Mr David Giovanelli, Mr William Hamilton, Ms Katherine Hayes, Mr Nicholas Hilton, Mr Ross Illingworth, Mr Chris MacEachern, Mr David Murray, Mrs Melissa Nolan, Mr Peter Richards, Ms Samantha Robinson, Mr Kevin Smith, Mr Craig Stephens, Ms Judith Sullivan, Mr Gary Toomey, Mrs Lauren Walker, and Mr Matthew Wigzell.
- According to Senator Hume's statement, the members were appointed following industry consultation to ensure 'the membership has industry knowledge and experience'.
- Ms Hume flags that further information on the FSCP will be made available on the ASIC website.

[Source: Minister for Financial Services, Superannuation and the Digital Economy Jane Hume media release 14/02/2022]

Compensation paid/offered for financial advice related misconduct reaches \$3.15bn

The Australian Securities and Investments Commission (ASIC) has released its [latest update](#) on the amount of compensation paid or offered to clients of the six largest banking and financial services institutions in Australia – AMP, ANZ, CBA, Macquarie, NAB, Westpac – as compensation for loss/detriment suffered as a result of financial advice related misconduct (ie fee for no service or 'non-compliant advice').

According to ASIC, as at 31 December 2021

- The six institutions had paid/offered a combined total of \$3.15billion in compensation, with \$1.3bn of this amount paid/offered by the institutions between 1 July 2021 to 31 December 2021.
- A total of \$2,904,340,579 was paid/offered to 1,289,256 customers (in compensation for fee for no service conduct)
- A total of \$246,814,985 was paid/offered to 11,392 customers (in compensation for losses/detriment caused by non-compliant advice)
- ASIC's summary table showing the amounts paid/offered by each of the six institutions is [here](#).

[Source: ASIC media release 14/02/2022]

CCIV/Retirement Income Covenant Bill passes both Houses

- The [Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021](#) was introduced in the House of Representatives on 25 November 2021 and passed both houses without amendment on 10 February 2022.
- Among other measures, the Bill will establish the tax and regulatory frameworks for corporate collective investment vehicles (CCIVs) (Schedules 1-5). Schedule 9 of the Bill will amend the Superannuation Industry (Supervision) Act 1993 (Cth) (SIS Act) to include a new retirement income covenant which will require trustees to develop a retirement income strategy for beneficiaries who are retired/approaching retirement.
- Commencement:

- The CCIV regime will come into effect from 1 July 2022
- Schedule 9 of the Bill (Retirement income covenant) will commence the day after the Bill receives Assent. Trustees are expected make their retirement income strategy publicly available from 1 July 2022. On this point, the [explanatory memorandum](#) states that: 'Trustees will not be required to give effect to all components of their strategy by 1 July 2022 as implementation of the strategy will be an ongoing process'.

Consumer group welcomes the introduction of the Retirement Income Covenant

- In a [short statement](#), welcoming the retirement income covenant, Super Consumers Australia stated that it would 'it will bring a much-needed focus to how super funds can support Australians manage their income in retirement'.
- The group also stated that it supports the expansion of the covenant 'over time' to the self-managed super sector.
- Finally the group also called for attention to be given to supporting consumers through the 'complex retirement planning process'. Specifically, the group suggested that the introduction of a UK-style 'guidance guarantee' should be considered 'to ensure everyone could access free, impartial, quality financial advice about their retirement options'.

[Source: Corporate Collective Investment Vehicle Framework and Other Measures Bill 2021]

Statutory review of the operation of the CDR to be completed 'in July 2022'

- Senator Jane Hume has [announced](#) that the government has appointed, Elizabeth Kelly, 'a former longstanding senior public servant', to lead a statutory review of the operation of the Consumer Data Right (CDR).
- Details about the scope of the review are fairly scant at this stage. According to Senator Hume's statement, the review will 'explore the extent to which implementation of the CDR statutory framework supports the core policy objectives of driving value for consumers, increasing competition within designated sectors, and driving innovation across the data services sector'.
- More particularly, Senator Hume flags that the 'review will focus on implementation of Open Banking and the introduction of rules to cover the energy sector from late 2022 and take into account other relevant CDR developments, such as the Digital Economy Strategy, the Government response to the final report of the Inquiry into Future Directions for the Consumer Data Right, the Consumer Data Right Strategic Assessment, and international developments'.
- Timing: Senator Hume states that the review will be 'completed in July 2022'.

[Source: Minister for Financial Services, Superannuation and the Digital Economy Jane Hume media release 14/02/2022]

\$450 SG income threshold abolished: Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Bill 2021 has passed both Houses

[Treasury Laws Amendment \(Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest\) Bill 2021](#) passed both Houses on 10 February 2022.

Among other changes:

- Schedule 1 will remove the \$450 per month income threshold under which employees do not have to be paid the superannuation guarantee by their employer. Announcing the passage of the Bill, Minister for Financial Services, Superannuation and the Digital Economy Jane Hume [noted that this measure](#) delivers on a key commitment in the 2021-22 Women's Budget Statement. The measure will apply from 1 July 2022 (or if the Bill does not receive Assent until after this date, from the beginning of the next quarter after Assent).
- Schedule 2 will increase 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. The changes will apply to requests made on or after 1 July 2022 for the Commissioner to make a First Home Super Saver determination.

The Bill also implements various other measures including changes enabling will people aged 60 years or more to make downsizer contributions to their superannuation plan from the proceeds of the sale of their home.

[Sources: Minister for Financial Services, Superannuation and the Digital Economy Jane Hume media release 10/02/2022; Treasury Laws Amendment (Enhancing Superannuation Outcomes For Australians and Helping Australian Businesses Invest) Bill 2021]

Accounting and Audit

In Brief | The UK Financial Reporting Council has released new guidance for auditors on meeting their responsibilities under ISA (UK) 72 following the introduction by the Financial Conduct Authority of TCFD aligned climate disclosure requirements for listed companies. The guidance also touches on auditor's responsibilities under ISA (UK) 720 in respect of the company's Streamlined Energy and Carbon Reporting disclosures.

[Sources: FRC media release 14/02/2022; Auditor responsibilities under ISA (UK) 720 in respect of climate-related reporting by companies required by the Financial Conduct Authority]

Insolvency and Reconstruction

ASIC prosecuted 104 people in H2 2021 for failing to assist registered liquidators in their investigations

- The Australian Securities and Investments Commission (ASIC) [has prosecuted 104 company officers](#) for failing to assist registered liquidators during the period 1 July 2021 to 31 December 2021. The prosecutions resulted in fines and costs totalling \$282,383.00.
- For context, this appears to be slightly down on the number of individuals prosecuted during the first half of 2021 (1 January 2021 to 30 June 2021). According to an [August 2021 media release](#) issued by the regulator, during the 1 January 2021 to 30 June 2021 period, ASIC prosecuted 124 individuals with the resulting fines and costs totalling \$341,407.
- ASIC Commissioner Sean Hughes commented:
'ASIC expects that company officers will always assist registered liquidators in their investigations, as they are required to under law. If they don't comply, then ASIC will prosecute them. It is crucial that liquidators receive the assistance they need, so that they can accurately report to creditors about the circumstances and financial positions of the companies they are investigating.'

[Source: ASIC media release 15/02/2022]



Risk Management

Culture

Implementation of the Respect@Work recommendations: New consultation launched

Key Takeouts

- The government is consulting on whether certain legislative changes recommended by the Respect@Work report, including the introduction of a positive duty on employers to prevent workplace sexual harassment, 'can and should be implemented'
- The due date for submissions is 18 March 2022. The accompanying online survey will also close on 18 March 2022.

The government has released [a consultation paper](#) and accompanying [online survey](#) seeking stakeholder views on 'whether...six legislative recommendations [included in the [Respect@Work Report](#)] can and should be implemented and, if so, options for implementation'.

Views sought on the potential introduction of a positive duty on employers to prevent workplace sexual harassment

- The consultation includes consideration of [Recommendations 17 and 18](#) which recommend the introduction of a positive duty on employers to prevent sexual harassment from occurring (recommendation 17) backed up by giving the Australian Human Rights Commission (AHRC) power to assess and enforce compliance with the new positive duty (18).
- In a brief [statement](#), the Australian Institute of Company Directors (AICD) has expressed its 'in principle' support for the introduction of a positive duty on employers to prevent workplace sexual harassment under the Sex Discrimination Act 1984 (Cth).

Other recommendations in scope of the consultation

The other recommendations in scope of the consultation are:

- [Recommendation 16\(c\)](#) which recommends that the Sex Discrimination Act be amended to ensure 'creating or facilitating an intimidating, hostile, humiliating or offensive environment on the basis of sex is expressly prohibited'
- [Recommendation 19](#) which recommends that the Australian Human Rights Commission Act be amended to provide the Australian Human Rights Commission with 'a broad inquiry function to inquire into systemic unlawful discrimination, including systemic sexual harassment'. It's recommended that the Commission should be given powers to require: the giving of information, the production of documents and the examination of witnesses 'with penalties applying for non-compliance, when conducting such an inquiry'.
- [Recommendation 23](#) which recommends that the Australian Human Rights Commission Act be amended to 'allow unions and other representative groups to bring representative claims to court, consistent with the existing provisions in the Australian Human Rights Commission Act that allow unions and other representative groups to bring a representative complaint to the Commission'.
- [Recommendation 25](#) recommends that the Australian Human Rights Commission Act be amended to 'insert a cost protection provision consistent with section 570 of the Fair Work Act 2009 (Cth)'.

The online survey accompanying the consultation paper includes 42 questions seeking views on each of the six recommendations in scope of the consultation. According to [Attorney General's website](#), the survey questions are 'focused on understanding whether legislative changes are necessary, and if so, determining the appropriate amendments to implement the relevant recommendation'.

Out of scope

- The consultation paper does not seek views on the implementation of Recommendation 28 (which recommended that which is to review the Fair Work Act to explicitly prohibit sexual harassment). According to the consultation paper, this is because, consistent with the government's 'roadmap' for responding to the Respect@Work report, the government intends to complete a review of the impacts of the changes introduced by the Respect at Work Act (which implement the government's response to Recommendation 16) before taking further action on Recommendation 28. This review is planned to commence in November 2022.
- The consultation paper also does not include consideration of recommendation 42 which relates to the amendment of the Workplace Gender Equality Act 2012 (Cth). According to the consultation paper, this is because the Department of the Prime Minister and Cabinet is separately leading the implementation of this recommendation.



Timing and progress to date

- The due date for submissions is 18 March 2022. The accompanying survey will also close on 18 March 2022.
- [According to Attorney General Michaelia Cash](#) the government has so far 'fully implemented or fully funded 42 of the 55 [Respect@Work Report] recommendations and committed more than \$66 million in funding for its implementation in the 2020-21 and 2021-22 Budgets'.

[Sources: Attorney General media release 14/02/2022; Consultation Paper: Respect@Work – Options to progress further legislative recommendations]

Parliamentary Workplace Reform (Set the Standard Measures No 1) Bill 2022 passes both Houses

- A Bill – [the Parliamentary Workplace Reform \(Set the Standard Measures No 1\) Bill 2022](#) - proposing to implement the government's response to two recommendations of the [Independent Review into Commonwealth Parliamentary Workplaces](#) (the Jenkins Report) was introduced into the House of Representatives on 9 February 2022 and passed both Houses without amendment on 15 February 2022.
- Broadly, the Bill:
 - amends existing requirements under the Members of Parliament (Staff) Act 1984 (MoP(S) Act) to require that reasons for termination of employment must be given in writing and to clarify that the existing legislative requirements apply to the termination of employment of MoP(S) Act employees (Recommendation 17(a) and (b)))

- amends the Work Health and Safety Act 2011 (WHS Act) to clarify the duties parliamentarians owe under the WHS Act (Recommendation 17(c))
- amends the Age Discrimination Act 2004 (AD Act) and Disability Discrimination Act 1992 (DD Act) to clarify that these laws apply to staff employed or engaged under the MoP(S) Act (recommendation 24).

[Source: Parliamentary Workplace Reform (Set the Standard Measures No 1) Bill 2022]

SEC seeks feedback on proposed changes to whistleblower rules

- The US Securities and Exchange Commission is seeking feedback on two proposed amendments to the rules governing its whistleblower program.
- Broadly,
 - the proposed amendment to Rule 21F-3 would enable SEC to pay whistleblower awards that would otherwise be covered by an alternative whistleblower program in certain circumstances. SEC Chair Gary Gensler said that the proposed change is 'designed to ensure that a whistleblower is not disadvantaged by another whistleblower program that would not give them as high an award as the SEC would offer'.
 - the second proposed amendment would mean SEC could only 'consider the dollar amount of a potential award for the limited purpose of increasing an award but not to lower an award'.
- The full text of the proposed changes can be found [here](#).
- SEC Chair Gary Gensler has [expressed support](#) for the proposed amendments.
- Commissioner [Hester M Pierce](#) has expressed strong disagreement on the need for any change to the existing rules both on the basis that they have only fairly recently been amended, and on the basis that there is no urgent need for change. Commissioner Pierce comments:

'In sum, this proposal is a solution in search of a problem. Given the demanding rulemaking agenda on which the Commission and its staff have embarked in recent months, this unnecessary and unpersuasive proposal to revisit the recently adopted amendments to the whistleblower rules is an imprudent use of our resources'.

[Sources: SEC media release 10/02/2022; SEC Chair Gary Gensler statement on amendments to the whistleblower program 10/02/2022; SEC Commissioner Hester M Pierce statement on amendments to the whistleblower program 10/02/2022]

In Brief | Rio Tinto has announced that it has reached agreement with the Yinhawangka Aboriginal Corporation on a new co-designed management plan to ensure the protection of significant social and cultural heritage values as part of Rio Tinto's proposed development of the Western Range iron ore project in the Pilbara. Rio Tinto flags that this marks the first time that the company and Yinhawangka have jointly developed a plan of this type

[Source: Rio Tinto media release 14/02/2022]

In Brief | Glencore has indicated that it expects that investigations by the UK, US and Brazilian regulators will be resolved in 2022 at an (estimated) cost of \$1.5bn. The company states that the US resolutions are 'expected to cover separate investigations into bribery and market manipulation. The resolution of the other investigations into the Group is not included within this provision and they remain ongoing'.

[Source: Glencore Preliminary Results 2021 15/02/2022]

Climate

Labor controlled Senate Committee recommends that the government 'consider reviewing the benefits of the oil and gas industry'

- On 19 September 2019, the Senate referred an inquiry into maximising the benefit of Australia's oil and gas reserves to the Senate Economics References Committee (the Committee) for inquiry and report by the first sitting day in March 2020. The reporting date was subsequently extended on multiple occasions to 10 February 2022. You can find the terms of reference for the inquiry [here](#).
- The Labor Chaired Committee's [final report](#) makes the following [two recommendations](#):
 - Recommendation 1: That the government 'consider reviewing the benefits of the oil and gas industry and whether there are opportunities to develop and diversify the industry for the benefit of all Australians. Consideration should also be given to including a review of the domestic gas security mechanism to ensure that it remains fit for purpose'.
 - Recommendation 2: As Australia transitions to net zero emissions by 2050, the committee recommends that the Australian Government consider supporting the diversification and transition to clean and renewable energy especially in areas like green hydrogen, with a role also for blue hydrogen. It is critical to ensure workers are not left behind and this could be achieved through measures like new energy apprenticeships to ensure that the necessary skills are developed'.

Comments on these recommendations from government Senators

In '[additional comments](#)' on the Committee's recommendations, government Committee members - Senator Scarr and Senator Bragg - did not reject the report recommendations, instead appearing to indicate that the recommendations are line with actions already being undertaken by the government.

For example:

With respect to Recommendation 1 they comment that:

'In our view, the policy and actions of the Government in this regard evidence a pattern of ongoing review and consideration of this mechanism and related policy matters. This is with a view to ensuring that Australia has access to an ongoing supply of gas for domestic uses which is reliable, secure and at the lowest practical price'.

With respect to Recommendation 2, again, they comment that:

'In our view, the policy and actions of the government in this regard evidence positive steps being taken to facilitate Australia's transition to a net zero emissions position by 2050. The policy initiatives

With respect to taking steps to ensure that 'workers are not left behind' Senators Bragg and Scarr again, point to actions already being taken by the government including funding to support apprenticeships and various other 'policy steps'.

An oil and gas benefits Czar? Senator Patrick makes nine recommendations to ensure financial returns benefit Australia and to ensure Australia's fuel security

In [separate comments](#), Senator Patrick nine recommendations including appointing a 'natural resources steward' or 'oil and gas national benefit czar' (recommendation 1).

- Recommendation 1: The government 'establish a natural resources steward, with explicit responsibility for the delivery of national benefit from Australia's natural resources; ensuring all necessary amendments are implemented to: give the national resources steward decision making powers; clarify its position with the petroleum Joint Authorities and regulators; and enable project assessments and approvals on the basis of benefit criteria'.
- Recommendation 2: The government 'introduce legislative and regulatory reforms that maximise the national public benefit stemming from the exploitation of Australia's oil and gas reserves, including: a national benefit statement for oil and gas; and the requirement to assess and approve projects based on transparent benefit criteria.
- Recommendation 3: The government ;supplement the PRRT by applying a fixed percentage royalty of the wellhead value on all projects subject to the PRRT; and that gas transfer pricing be calculated on a net-back or modified netback basis; and that the depreciation of expenditure be limited and the ability to uplift unused expenditure removed'.

- Recommendation 4: The government 'implement a single common point for calculating PRRT that is consistently applied across all projects.'
- Recommendation 5: The government 'improve the transparency of the oil and gas industry and its operations through: publication of mandatory periodic reports; development of enhanced outcomes and supporting criteria to be applied during project approvals, evaluations, and reviews, including those relating to public economic return, environmentally sustainable development, field management, production and efficiency, industry collaboration and infrastructure sharing and safety; and regulator analysis and publication of all identified performance data against outcomes and benchmarking to improve industry performance'.
- Recommendation 6: The government 'introduce a scheme to collect mandatory, up-front remediation or decommissioning payments to be held in a sovereign escrow account until the regulator is satisfied that decommissioning and post decommissioning requirements have been met'.
- Recommendation 7: The government 'phase out all assistance, subsidies and grants to oil and gas projects on a sliding scale by 2030, with assistance redirected to assisting the transition of companies and communities, and developing and producing alternative, green fuels, or renewable energy sources'.
- Recommendation 8: The government 'establish a fund for workers and regions that are impacted by the energy transition, and that this fund be delivered by a new energy transition authority that includes representatives from government, industry, unions, and affected communities'
- Recommendation 9: The 'committee conduct an investigation into maximising the benefit from Australia's critical and rare minerals, including: consideration of nationalisation mechanisms and benefits, such as equity and shares, as well as direct ownership; review of the minerals taxation and royalties regime; establishment of a sovereign wealth fund for the long-term benefit of Australians; and assessing the suitability of the Future Fund for the role of fund administrator'.

Dissenting report

- In a dissenting report, the Australian Greens senators recommended that the government:
 - 'phase out of coal and gas by 2035;
 - adopt 75% emissions reduction by 2030, and net-zero emissions reduction by 2035
 - end all public subsidies of coal, oil and gas
 - introduce a 10% Commonwealth royalty for gas extraction, creditable against the PRRT
 - implement a long-term solution to ensure industry covers the full cost of offshore decommissioning, informed by overseas models that are underpinned by transparency and accountability'.

[Source: Senate Standing Committee on Economics Inquiry into Australia's oil and gas reserves: Final Report]

New fossil fuels Bill introduced: Greens Bill would halt the extraction, processing and export of coal, gas and oil

The Greens have introduced a Bill – [Moratorium on New Coal, Gas and Oil Bill 2022](#) – into the House of Representatives which legislated, would operate to prevent the extraction, processing, transportation and export of coal, gas and oil. More particularly, the Bill would:

- Prohibit the environmental approval of new coal, gas and oil projects. This measure would take effect from the date at which the Bill receives Assent.
- Revoke the environmental approvals for those coal, gas and oil projects that have received approval but have not yet come into operation (ie revoke approval for the action covered by the approval).

In addition, (if legislated) the Bill would:

- Ban new petroleum exploration permits being granted or renewed in Commonwealth waters, and cancel all current petroleum exploration permits.
- Ban new petroleum production licences being granted or renewed in Commonwealth waters, and cancel all current petroleum production licences where petroleum recovery operations have not yet begun.

[Source: Moratorium on New Coal, Gas and Oil Bill 2022]

Other News

2021 foreign investment reforms: Treasury evaluation report released, consultations on possible enhancements to the regime launched

- **Evaluation of the 2021 foreign investment reforms:** The [final report](#) evaluating the 2021 foreign investment reforms, prepared by the Secretary to the Treasury, was publicly released on 14 February 2022.

Broadly, the report concluded that overall in their first year of operation, the reforms have achieved the government's intent 'particularly by ensuring that investments which may raise national security considerations are assessed by the government'..

Having said this, the report comments that it is as yet too early to determine the impact they may have had/have had on foreign investment flows into Australia or the broader economy, though 'indications are that the reforms to the framework are striking the appropriate balance between supporting foreign investment into Australia and protecting the national interest'.

The report recommends that the framework should 'continue to be monitored to ensure it keeps pace with developments in the foreign investment landscape'.

Further detail: The report makes seven 'findings' – all of which the government has accepted. These are listed at p3 of the [report](#). Full details of the government's response to the report is included in Attachment A to a separate discussion paper [here](#).

- **Consultation on possible enhancements to the regime:** In response to the Treasury's evaluation of the 2021 foreign investment reforms, the government has opened a short consultation (14 February to 11 March 2022) seeking views on potential options to 'enhance Australia's foreign investment framework'. You can find the discussion paper [here](#).
- **Consultation on draft regulations:** As an 'immediate response' to Treasury's evaluation of the reforms, the government has launched a [short consultation](#) (14 February to 25 March 2022) seeking feedback on [draft regulations](#) with the aim of reducing 'regulatory burden by clarifying certain aspects of the framework and streamlining some less sensitive types of investment'.

[Sources: Treasury: Evaluation of the 2021 foreign investment reforms - Final Report; Treasury Consultation: 2022 Foreign Investment Reforms - Exposure Draft Regulations; Treasury Consultation: 2022 Foreign Investment Reforms - Discussion Paper]

Contacts



Mark Standen
Consultant

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



Siobhan Doherty
Partner

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



Kate Hilder
Consultant

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