



Governance News

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

6 December 2023

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Meetings and Proxy Advisers

2023 AGM season | Recent string of 'strikes' continues

'First strike' at Harvey Norman

Harvey Norman Holdings Ltd (Harvey Norman) shareholders voted down the Resolution to approve the company's remuneration report (Resolution 2 in the Notice) at the 29 November 2023 AGM with 81.83% of shareholders voting 'against'. This constitutes a first 'strike'.

[Note: For context, the 'two strikes rule' means that boards face the prospect of being 'spilled' if 25% or more of shareholders vote against the (advisory) resolution to approve the company's remuneration report at two consecutive AGMs – that is, if there are two consecutive 'strikes' (25% or more 'against' votes) against the company's remuneration report. For more on the operation of the two strikes rule see: [Executive remuneration: a quick guide – Parliament of Australia \(aph.gov.au\)](#).]

All other Resolutions were carried, though 20.37% of shareholders voted against the re-election of executive director Chris Mentis (Company Secretary) to the board.

Ahead of the meeting, the Australian Shareholder

Association (ASA) indicated it would vote against the remuneration report and the re-election of Mr Mentis citing concerns over board independence, and various 'shortcomings' in the design/structure of the short term incentive plan and long term incentive plan.

How (some) investors voted

A number of investors voted down the remuneration report (as well as 'against' some directors).

- Legal and General Investment Management (LGIM) voted against the remuneration report and against the re-election of two directors (Executive Chair Gerry Harvey and Audit and Risk Committee and Remuneration Committee member Luisa Catanzaro). The reasons given are as follows:
 - Vote 'against' the remuneration report:



'A vote against is applied as the company does not have a shareholding guideline in place for executives. LGIM believes a shareholding requirement is a good way to align with long-term shareholder interests as executives are expected to maintain a proportion of earned shares at risk over the medium term. A vote AGAINST this resolution is warranted.- Quantitative pay for performance analysis indicates a high degree of concern for misalignment of pay, performance and shareholder outcomes in FY23.- There were fixed remuneration increases to the CEO and executive directors, despite the CEO's fixed remuneration being substantially above the median of peer groups prior to the increase.- STI financial targets were reduced from the prior year targets and results. Increases in STI opportunities may be expected by investors to be accompanied by increased rigour of targets.- The STI deferral mechanism is inconsistent with market and essentially STI bouses are all-cash.- Target rigor and alignment with shareholder returns of the Return On Net Assets performance measure in the LTI may be questioned given the decline in the company's share price since highs in FY21 and FY22, compared with maximum LTI vesting of the FY20 and FY21 LTI.- There is provision for dividends on unvested shares paid in the performance period on rights that ultimately vest. There is no present entitlement to shares or dividends during the performance period.- There was an excessive increase of approximately 75.6 percent to \$641,148 in the director's fee to Kenneth Gunderson-Briggs, which is poorly explained and lacks sufficient transparency'.

- Vote 'against' the re-election of Gerry Harvey:

'A vote against is applied as LGIM expects the presence of an independent lead director to ensure there is sufficient challenge to management. Diversity: A vote against is applied as LGIM expects a company to have a diverse board, with at least one-third of board members being women. We expect companies to increase female participation both on the board and in leadership positions over time'.

- Vote 'against' the re-election of Luisa Catanzaro:

'Auditor independence - Accountability: LGIM notes concerns with the auditor's independence given their long tenure and/or excessive non-audit fees being paid. As shareholders are not afforded a separate resolution to vote on the auditor's ratification, a vote against the Audit Committee member is warranted to highlight our concerns'.

- California Public Employees Retirement System (CalPERS) [voted against](#) the remuneration report and against the re-election of the three directors standing for re-election (Gerry Harvey, Chris Mentis and Luisa Catanzaro) as did [California State Teachers Retirement System \(CalSTRS\)](#)
- NYC pension funds (new York City Board of Education Retirement, New York City Employees Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, Teachers Retirement System of the City of New York) [voted](#) against the remuneration report, against the election of Chris Mentis but voted in support of the other directors.

Despite the 'strike', the remuneration report had the backing of Norges Bank Investment Management (NBIM) which [voted](#) in support of all Resolutions.

'First strike' at Bank of Queensland

All Resolutions were carried at the Bank of Queensland Ltd (BoQ) 5 December 2023 AGM.

However, the Resolution to approve the company's remuneration report (Resolution 3 in the Notice) attracted a [40.44%](#) 'against' vote constituting a 'first strike'.

[36.11%](#) of shareholder also voted 'against' the election of the only member of the board standing for election/reelection Bruce Carter (Chair of the Risk Committee and a member of the Audit, Transformation & Technology, Investment, People, Culture and Remuneration and Nomination & Governance Committees).

These outcomes may be due to a number of factors.

- In [his address](#) to the meeting, BoQ Chair Wawick Negus expressed disappointment in the bank's share price performance and the 'risk weaknesses' acknowledged at the 2022 AGM and subsequent Court Enforceable Undertakings with APRA and AUSTRAC which he said may have 'eroded some of the trust you have in us'.
- The [AFR reports](#) that both Glass Lewis and Institutional Shareholder Services recommended against Mr Carter's reelection also citing the need to hold the board accountable for failures of risk oversight. The AFR also suggests that the company's share price performance may have contributed to the result.

- Ahead of the meeting, the Australian Shareholders' Association [indicated](#) its intention to vote 'against' the reelection of Mr Carter citing 'overboarding' concerns – Mr Carter Chairs four other organisations and sits on the board of companies (including the BoQ) – and to 'hold the board to account for the regulator assessments [of the banks' risk culture in light of the court enforceable undertakings with APRA and AUSTRAC]...notwithstanding that Mr Carter was instrumental in identifying and escalating risk issues and reporting them to the regulators'. The ASA did not however recommend 'against' supporting the company's remuneration report.

How did (some) investors vote?

- Norges Bank Investment Management (NBIM) voted [against](#) Mr Carter's election stating that:
 'Shareholders should have the right to seek changes to the board when it does not act in their best interest. We will consider whether the board has failed to act on material requests from shareholders, sought to circumvent shareholder proposals or implemented governance changes limiting shareholders' rights without their approval. When voting on a proposal to discharge the board of responsibilities, we will consider whether any information raises reasonable doubt about the board's actions. We will also take into considerations unsatisfactory financial and strategic performance, mismanaged risk-taking, unacceptable treatment of stakeholders or undesired environmental or social outcomes from company operations'.
- NBIM voted in support of all other Resolutions (including the Resolution to approve the remuneration report).
- California Public Employees Retirement System (CalPERS) [voted against](#) the remuneration report and against the re-election of Mr Carter.
 - California State Teachers Retirement System (CalSTRS) [voted against](#) the remuneration report, against Mr Carter's re-election and against the Equity Grant to the CEO as did [NYC pension funds](#) (new York City Board of Education Retirement, New York City Employees Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, Teachers Retirement System of the City of New York).

Broader context

This is the latest in a recent string of 'strikes' against ASX companies. For example:

- Tabcorp Holdings Ltd: [34.25%](#) against (25 October 2023).
- APA Group: [25.79%](#) against (26 October 2023)
- Whitehaven Coal Ltd: [40.61%](#) against (26 October 2023).
- Woolworths Group Ltd: [28.04%](#) [against](#) (26 October 2023).
- Qantas Airways Limited: 82.93% [against](#) (3 November 2023)
- Magellan Financial Group: [58.19%](#) against (8 November 2023)
- Lendlease Group (Lendlease): [39.81%](#) against (17 November 2023)
- Lendlease Group: [39.81%](#) (17 November 2023)
- Fortescue: [53.37%](#) against (21 November 2023)
- Core Lithium: [25.4%](#) against (24 November 2023)
- Lovisa Holdings Ltd: [73.43%](#) against (22 November 2023)

[Sources: Harvey Norman: Notice of Meeting; Results of Meeting; Bank of Queensland: Notice of Meeting; Results of Meeting]

Disclosure and Reporting

Greenwashing | ASIC again takes action over (alleged) failures to accurately apply investment screens

- In its [latest greenwashing enforcement action](#), the Australian Securities and Investments Commission has issued two infringement notices to a financial services firm over the firm's alleged failure to apply its investment screens as promised.
- Broadly, ASIC alleges that investor funds were directly exposed for short periods of time to securities in several weapons companies despite the fact that the ESG Policy in the Product Disclosure Statement (PDS) indicated that investments of this kind would be excluded. You can find further details in the two infringement notices published on ASIC's infringement notices register [here](#) and [here](#).
- The infringement notices were issued after these issues were self-reported by the firm to ASIC.
- The firm has paid \$29,820 to comply with the two infringement notices (but this is not an admission of guilt or liability).
- Taking action against greenwashing has been an enforcement priority for ASIC in 2023 and has again been identified [as a priority in 2024](#). This latest action by the regulator further illustrates that ASIC's continued focus on tackling the issue extends beyond 'green' or climate-related claims to include broader ESG claims. For further discussion on this see: [ASIC targets greenwashing with a social dimension - Insight - MinterEllison](#)
- ASIC's announcement points to [ASIC Information Sheet 271](#) (INFO 271) as a source of guidance on how to avoid greenwashing when offering or promoting sustainability-related or ethical products and investments.

[Source: ASIC media release 01/12/2023]

Basel Committee launches consultation on a Pillar 3 disclosure framework for climate-related financial risks

The Basel Committee on Banking Supervision has released a [consultation paper](#) seeking views on its preliminary proposal for new

'qualitative and quantitative Pillar 3 disclosure requirements [for climate-related financial risks] that would complement the work of other standard setters, including the International Sustainability Standards Board (ISSB), and provide a common disclosure baseline for internationally active banks'.

Broadly, the Committee is seeking feedback on

- Proposed/potential disclosure of qualitative information by banks around their:
 - Governance structure and oversight of climate-related risks (including management's role in this context)
 - Strategy for reducing and/or mitigating their climate-related financial risks including their transition plans
 - Material exposures to transition and physical risks
 - Risk management 'organisation, processes and procedures'
- Potential disclosure of specific metrics to 'enable market participants to assess climate-related financial risks at banks'.

The Committee is also seeking feedback on which elements of the proposed new requirements should be mandatory and which 'subject to national discretion'.

The due date for submissions is 29 February 2023.

[Source: Basel Committee on Banking Supervision 29/11/2023]

Sector-specific transition taxonomy: MAS announces the release of the Singapore-Asia Taxonomy for Sustainable Finance, separately announces new measures to accelerate the phase out of coal fired power plants

Singapore-Asia Taxonomy for Sustainable Finance

Following four rounds of consultation, the Monetary Authority of Singapore (MAS) [has announced](#) the launch of the [Singapore-Asia Taxonomy for Sustainable Finance \(Taxonomy\)](#)

The Taxonomy 'sets out detailed thresholds and criteria for defining green and transition activities that contribute to climate change mitigation' across eight sectors that together make up 90% of the region's greenhouse gas (GHG) emissions - the Energy; Real Estate; Transportation; Agriculture and Forestry/Land Use; Industrial; Information and Communication Technology; Waste/Circular Economy; and Carbon Capture and Sequestration sectors.

MAS Managing Director Mr Ravi Menon [sums up](#) why the release of the Taxonomy marks a 'significant milestone' as follows.

'it is the first taxonomy globally that sets out credible definitions for transition activities. In most cases, we cannot go directly from brown to green. We need to go through a transition phase but we need to make sure this transition is credible. Second, this taxonomy has extensive coverage – it covers sectors making up 90% of the region's greenhouse gas emissions. It will serve as a guide to allocate capital into green and transition activities for the region. Third, this taxonomy is industry-led. It draws extensively on the experience of financial institutions and real economy players engaged in transition activities in the region. It has gone through four rounds of public consultations.'

Setting credible definitions for transition activities

The new taxonomy uses a 'traffic light system' to signal whether/the extent to which activities across the eight sectors covered meet, or on a pathway to meeting, required thresholds:

- A green classification represents activities that contribute substantially to climate change mitigation by operating at near zero emissions, or are on a pathway to net zero by 2050.
- An amber classification represents transition activities which are not presently on 1.5°C pathway, but are either 'moving towards a Green transition pathway within a defined time frame' or 'facilitating significant emissions reductions in the short term with a prescribed sunset date'.
- 'Ineligible' represents activities that are not currently eligible under the Taxonomy because they are either 'directly unsustainable activities' ie activities that are not compatible with a 1.5C aligned pathway which will need to be phased out if emissions cannot be reduced (eg fossil fuels); or 'activities that are not currently compatible nor moving sufficiently rapidly towards with a 1.5°C-aligned trajectory and will require emissions reductions (incl. Scope 3) to be in line with a green transition pathway (eg high-carbon cement producer)'

Phase out framework for coal fired power plants

The Taxonomy provides a framework for the phase-out of coal-fired power plants. MAS [writes](#):

'To ensure credibility of the early coal phase-out process, the Taxonomy sets out both entity and facility-level criteria that are aligned to a 1.5°C scenario. Such criteria include that the electricity generated from the phased-out CFPP has to be fully replaced with clean energy within the same electricity grid and the coal plant needs to have a just transition plan'.

Separately, MAS has [announced](#) the launch of:

- the Transition Credits Coalition (TRACTION) which will, over the next [two years](#):
 - '[identify](#) system-wide barriers and develop solutions for transition credits to be utilised as a credible financing instrument. These include identifying robust crediting approaches that can be applied to regulated and deregulated electricity markets, mitigating risks of non-delivery of credits, and exploring avenues to build buyers' confidence in transition credits'
- [two pilot projects](#) to test the use of high-integrity transition credits in transactions for the early retirement of coal-fired power plants.

[Sources: MAS media releases: 03/12/2023; 04/12/2023]

IFRS announces three further commitments to support implementation and adoption of 'robust' sustainability-related financial disclosures

In his [4 December 2023 COP28 Address](#), Chair of the IFRS Foundation Trustees, Erkki Liikanen reflected on the progress made to date towards improving sustainability-related financial disclosures including the delivery of the first two global sustainability disclosure standards [IFRS S1](#) and [IFRS S2](#) (and [subsequent endorsement](#) of those standards by the International Organisation of Securities Commissions Organisation (IOSCO).

Mr Liikanen also announced three new commitments:

- **Implementation of a 'capacity building programme so that developing and emerging jurisdictions are better placed to adopt and use the ISSB's Standards'**. Mr Liikanen said that the launch of the [IFRS Sustainability knowledge hub](#) is 'an important part of this work'. For context, the IFRS Sustainability knowledge hub is an online repository of resources to support the application of the ISSB standards.
- **Supporting jurisdictional adoption of the ISSB's standards** through bilateral dialogues with governments and regulators including continuing to work closely with IOSCO and the Financial Stability Board.
- **Advancing 'new standard-setting initiatives to build out the global baseline of sustainability-related disclosures** following feedback to the recent consultation on the ISSB's future agenda'.

[Note: The public consultation period for the ISSB's Request for Information Consultation on Agenda Priorities for the next two years closed on 1 September 2023. As yet, the ISSB has not finalised its position. It has indicated it will ['finalise the work plan in the first half of 2024'](#).]

- Mr Liikanen also announced the reappointment of ISSB Chair Emmanuel Faber for a second term until 31 December 2027. Mr Liikanen confirmed that Mr Favour will continue to be supported by Vice Chairs Sue Lloyd and Jingdong Hua.

[Source: Speech by Chair of the IFRS Foundation Trustees Erkki Liikanen: ISSB at COP28: Erkki Liikanen on progress and priorities to advance global sustainability disclosures 04/12/2023]

In Brief | Greenwashing: IOSCO has released a report providing an overview of initiatives undertaken in various jurisdictions to address greenwashing and highlighting current regulatory best practices (as well as the challenges for regulators in tackling the issue)

[Sources: IOSCO media release 04/12/2023; IOSCO Report: Supervisory Practices to address Greenwashing]



Top Story | Modern Slavery: Update on recent moves to strengthen Australia's modern slavery regime

We outline recent moves aimed at strengthening Australia's modern slavery regime.

Modern Slavery Commissioner: New Bill introduced

The [Modern Slavery Amendment \(Australian Anti-Slavery Commissioner\) Bill 2023 \(Cth\)](#) was introduced into the House of Representatives on 30 November 2023.

Broadly the Bill would (if enacted) amend the Modern Slavery Act 2018 (Cth) (MSA) to establish and legislate the core functions of a Modern Slavery Commissioner as an independent statutory officer holder within the Attorney General's portfolio.

Notably, it's envisioned that while the new Commissioner's functions would include raising awareness of/educating industry about modern slavery and advocating for continuous improvement in policy/practice, they would not include:

'[investigative](#) or coercive powers that would enable them [ie the Commissioner] to compel others to provide information needed to investigate individual complaints or allegations. The investigation of individual cases, or suspected cases, is performed by Australia's law enforcement agencies'.

In his [second reading speech](#), Attorney General Mark Dreyfus described the establishment of the Commonwealth Modern Slavery Commissioner as 'a landmark reform in Australia's response to modern slavery'.

Proposed timing: It's proposed that the Bill would commence on a day to be fixed by Proclamation to '[enable](#) the alignment of the recruitment and appointment of the inaugural Australian Anti-Slavery Commissioner with the commencement of the legislation that enables their establishment and operations'.

To '[ensure](#) that commencement is not delayed beyond what is reasonably necessary to establish the Commissioner and their Office' the Proclamation period is limited to 12 months. If Proclamation does not occur within 12 months of Assent, the Act will automatically commence – ie the Bill would commence 12 months and one day after Assent.

For a detailed overview of the Bill see: [Steps towards establishment of an Anti-Slavery Commissioner - Insight - MinterEllison](#)

Government response to the Statutory Review of the MSA still pending

The government is yet to finalise, and has [signalled](#) that it is still considering, its response to the statutory review of the Commonwealth MSA. For more on the Review Recommendations see: [Proposed reforms to Australia's modern slavery regime - Insight - MinterEllison](#)

However, the government envisions that the new Modern Slavery Commissioner would '[play](#) a key role in shaping implementation of future reforms' under consideration by the government.

New Modern Slavery Expert Advisory Group established

The government [has established](#) a new 20 member Modern Slavery Expert Advisory Group (MSA Advisory Group) to '[provide](#) expert, confidential and timely advice to the Attorney-General's Department' on the operation of the MSA and on the practical implementation of measures to strengthen the MSA, currently under consideration following the MSA Review.

The full [terms of reference](#) for the MSA Advisory Group provide more detail.

The members of the MSA Advisory Group have been appointed for an initial term of two years. A full list of organisation members and individual members is here: [Modern Slavery Expert Advisory Group | Attorney-General's Department \(ag.gov.au\)](#)

The MSA Advisory Group is set to meet 'approximately' four times a year and will be Chaired by either the Attorney General or a 'senior official' within the Attorney General's Department.

Funding announcement

Separately, the government has [announced](#):

- \$12.1 million in funding over five years for the new Forced Marriage Specialist Support Program which 'will provide individualised needs-based prevention and early intervention support for those experiencing, or at risk of experiencing forced marriage. It will also provide essential access to counselling and emergency accommodation where required'.

This has been [welcomed](#) by The Red Cross which has advocated for prevention and early intervention support for those experiencing, or at risk of experiencing forced marriage, for several years, including recommending changes to strengthen and extend the Forced Marriage Specialist Support Program.

- \$2.2 million in further funding to extend the Speak Now project which aims to prevent forced marriage through 'education, awareness raising and collaboration with the sector'.

[Sources: Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (Cth); Attorney General Mark Dreyfus media release 30/11/2023; Attorney General Mark Dreyfus Second Reading Speech]

Top Story | Harnessing technology to manage ESG risks and unlock opportunities

MinterEllison has released an article discussing the important role technology can play in assisting organisations to navigate accelerating ESG risk and unlock ESG value.

You can access the full text here: [Harnessing technology to manage ESG risks and unlock opportunities - Insight - MinterEllison](#)

NSW has become the latest Australian State/Territory to legislate emissions reduction targets: The Bill to legislate 2030 and 2050 emissions reduction targets, create a new monitoring body has passed both Houses and now awaits Assent

Climate Change (Net Zero Future) Bill 2023 (NSW)

The [Climate Change \(Net Zero Future\) Bill 2023 \(NSW\)](#) passed both Houses on 29 November and now awaits Assent.

Broadly the Bill:

- sets (s9) the following 2030 and 2050 targets for the reduction in net greenhouse gas emissions in New South Wales are:
 - to reduce net greenhouse gas emissions in New South Wales by at least 50% from the net greenhouse gas emissions in 2005 by 30 June 2030
 - to reduce net greenhouse gas emissions in New South Wales by at least 70% from the net greenhouse gas emissions in 2005 by 30 June 2035
 - to reduce net greenhouse gas emissions in New South Wales to zero by 30 June 2050
 - The Bill also includes scope for Regulations to ramp up these targets.
- sets an objective for New South Wales to be more resilient to a changing climate (the adaptation objective)
- establishes a Net Zero Commission to independently monitor, review and report on progress towards the targets set
- establishes guiding principles for action to address climate change.

Timing: The legislation will commence on the date of Assent.

Broader context: Australian States and Territories are moving to legislate emissions reduction targets

- **Western Australia:** The [Climate Change Bill 2023 \(WA\)](#) was introduced into the Western Australian Parliament on 30 November 2023. Among other things, the Bill proposes to: a) set a target to reduce WA's net greenhouse gas emissions to zero by 2050; b) includes machinery provisions to require the Minister to set interim targets for

reducing WA's net emissions for 2035, 2040, 2045 and 2050; and c) introduced a requirement for annual progress reporting to parliament.

- **Queensland:** The [Queensland Climate Transition Bill 2023 \(QLD\)](#) was introduced on 15 March 2023. Broadly, the Bill would do three things: a) legislate emissions reduction targets of at least 75% on 2005 levels by 2030 and net zero emissions by 2035; b) **introduce an immediate ban on new coal, oil or gas approvals and the phase out of fossil fuel exports by 2030**; and 3) establish an oversight/monitoring body – the Queensland Climate Transition Authority – to **oversee the transition away from coal, oil and gas** and report annually to Parliament on progress.

The following states/territories have already legislated targets:

- **South Australia:** South Australia was the first state to legislate greenhouse gas (GHG) emissions reduction targets through the [Climate Change and Greenhouse Emissions Reduction Act 2007 \(SA\)](#). The SA government has since [signalled its intention](#) to review this legislation with a view to 'updating' existing targets and 'strengthening climate action'.
- **Victoria:** Victoria legislated its net zero target in the [Climate Change Act 2017 \(Vic\)](#). The Victorian government has [since set](#) the following interim targets – 28-33% reduction on 2005 emissions levels by 2025, 45-50% reduction on 2005 by 2030 and 75-80% reduction by 2035.
- **Australian Capital Territory:** The ACT legislated emissions reduction targets through the [Climate Change and greenhouse Gas Reduction Act 2010 \(ACT\)](#). Two new reports released on 30 November 2023 - [2022-23 Annual Report under the Climate Change and Greenhouse Gas Reduction Act 2010 \(ACT\)](#) and the [ACT Greenhouse Gas Emissions Inventory Report 2022-23](#) – provide updates on the State's efforts to reduce emissions.
- **Tasmania:** Under the [Climate Change \(State Action\) Act 2008 \(TAS\)](#) Tasmania legislated a target of reducing greenhouse gas emissions to 60% below 1990 levels by 2050. The Tasmanian government has [also 'committed to net zero emissions by 2050'](#).

The Northern Territory is an outlier...

- **Northern Territory:** The Northern Territory has neither legislated, nor introduced a Bill to legislate, emissions reduction targets. The NT government has set an [aspirational goal](#) to achieve net zero emissions by 2050. The NT government released [a report in October 2023](#) outlining the progress being made towards this (and other climate goals).

[Sources: Climate Change (Net Zero Future) Bill 2023 (NSW); Minister for Energy and Climate Change, Minister for Environment and Heritage Penny Sharpe media release 30/11/2023]



Legislating the right to a healthy environment: HRLC recommends three changes to strengthen the ACT Bill

Context: International recognition of a right to a healthy environment

In July 2022, the UN General Assembly recognised the right to a healthy environment as a universal human right. See: [What is the Right to a Healthy Environment? Information Note](#).

For discussion of the potential implications of this in the Australian context see: [The UN says access to a healthy environment is a human right. Here's what it means for Australia \(theconversation.com\)](#)

ACT Bill introduced

Following earlier consultation, the ACT government introduced a Bill – [Human Rights \(Healthy Environment\) Amendment Bill 2023 \(ACT\)](#) - which if enacted, would enshrine the right to a 'clean, healthy and sustainable environment' in the Human Rights Act 2004 (ACT).

Broadly, the (proposed) right would include (but is not limited to) the right to:

'clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and eco-systems'

This is [intended to](#):

'ensure that environmental and climate impacts are given proper consideration in the exercise of all public authority functions, including in the development of legislation, policy and decision making. This will institutionalise greater understanding of human rights and environmental considerations across Government, building and strengthening the ACT's human rights culture'.

For example, the amendment would mean (among other things) that there would need to be 'prior assessment of possible environmental impacts of proposed projects and policies, including their potential effects on human rights'.

No penalties for the first five years

In addition, the Bill includes the ability to report breaches of the (proposed) right to the ACT Human Rights Commission – though it does not provide for any penalties for breach or remedies at this stage.

According to the [explanatory memorandum](#) this is to allow:

'public authorities time to fully understand, implement and institutionalise the right to a healthy environment in decision-making, policies and legislation, the direct right of action to the ACT Supreme Court for a breach of public authority obligations, and the ability to raise public authority breaches as part of other litigation, set out in section 40C of the HR Act, will not initially apply to this right'.

This is proposed to be subject to a mandatory statutory review, the results of which would be required to be tabled 'as soon as practicable after five years from commencement of the new right'.

Suggested improvements: Human Rights Law Centre submission on the Bill

The Bill was referred to the Standing Committee on Justice and Community Safety (the Committee) for report by [26 January 2024](#). The due date for submissions was 29 November 2023.

In its [submission](#), the Human Rights Law Centre expressed strong support for 'placing human rights at the heart of all our laws' but also raised concerns about certain aspects of the Bill – in particular: a) the limited engagement with Aboriginal and Torres Strait Islander people in the drafting of the Bill; b) the 'uncertainty' around when some aspects of right will apply; and c) the lack of ability to bring court proceedings where public authorities breach their obligations' - which the HRLC considers will

'weaken the positive practical impact that inclusion of a right to a healthy environment could have on people and communities throughout the ACT'.

Three recommendations to 'strengthen' the Bill

To address these concerns, the HRLC recommends that the Committee;

- 'proactively engage[s] with Aboriginal and Torres Strait Islander people in the ACT and seek their views and recommendations on the Bill'.



- Ensures that 'all aspects of the right to a health environment...[are] immediately applicable'
- Ensures that the right to a health environment is 'fully enforceable by people whose rights are adversely impacted' by enabling the right to be enforceable through the courts immediately, or alternately, no later than six months after the commencement of the right.

On this last point, the submission states:

...'the right to a healthy environment in the Bill can be strengthened, in particular by ensuring that the right is fully realisable and enforceable immediately. This is critical given the urgency of the climate and environmental crises we all face and the need for certainty and access to justice, particularly for communities most at risk'.

[Sources: ACT Minister for Human Rights Tara Cheyne media release 26/10/2023; Human Rights (Healthy Environment) Amendment Bill 2023 (ACT); Human Rights Law Centre submission 01/12/2023]

In Brief | The Nature Repair Market Bill 2023 (Cth) and Nature Repair Market (Consequential Amendments) Bill 2023 (Cth) which together will establish a framework for a voluntary national biodiversity market have passed the Senate with 11 Greens amendments

[Note: MinterEllison has released an article providing context for the legislation and breaking down the key points. You can access the full text here: [Australia's biodiversity agenda: Nature Repair Market - Insight - MinterEllison](#)]

[Source: Nature Repair Market Bill 2023 (Cth); Nature Repair Market (Consequential Amendments) Bill 2023 (Cth)]

Worker welfare | SOC nominates three directors, escalates push for labour rights at Starbucks

Starbucks shareholder (and labour union coalition) the Strategic Organizing Center (SOC), has escalated pressure on Starbucks to shift its current stance on worker welfare/labour rights with the [announcement](#) that it has nominated three director candidates – Maria Echaveste (described as a 'former senior White House official and corporate attorney'), Joshua Gotbaum (described as an experienced director of public and private companies) and Wilma Liebman (Chair of the National Labor Relations Board (NLRB) under the Obama administration) – to stand for election to the Starbucks board at the 2024 shareholder meeting.

Starbucks 'currently expects' that its 2024 Annual Meeting of Shareholders will be held on 13 March 2024.

For context, this follows a [52% vote in support of a 'freedom to unionise proposal'](#) at the Starbucks 2023 shareholder meeting. For more on this see: [Governance News 5 April 2023 at p8](#).

It also follows a year in which shareholder proposals dealing with various issues around worker rights/welfare including the right to unionise emerged as an area of increasing focus for [shareholder advocacy groups](#) and an issue that investors showed themselves increasingly willing to support.

[Note: Analysis from Diligent Market Intelligence found that 'freedom of association proposals' were among the best performing ESG proposals of the 2023 season. Read: <https://corpgov.law.harvard.edu/2023/11/30/which-esg-proposals-won-the-favor-of-investors/>]

Why this escalation is considered necessary: SOC's rationale for seeking board change

Broadly, SOC [considers](#) that board change is required because (in its view):

'Starbucks' severe human capital mismanagement [ie opposition to/resistance to workers' attempts to unionise] has materially damaged the Company's reputation and exposed it to significant financial, legal and regulatory risk'.

SOC points to high volume of complaints issued by the NLRB against the company over its treatment of workers - eg complaints over 'illegal discipline and firings' - as well as to the high volume of injunctions sought by watchdog against the company in support.

SOC states:

'At a time when Starbucks has set an ambitious goal of opening more than 17,000 new stores by 2030, it cannot waste any more resources fighting its own workers. While these missteps have not yet led to a visible strain on the Company's financial performance, given the reputational damage and potential impact on

Starbucks' ability to execute its growth strategy, we believe it is only a matter of time until the share price reflects the cost of this failed oversight. This threat to shareholder value is why action must be taken now'.

Starbucks considers it is doing enough already...

In a [brief statement](#) in response to this, Starbucks underlined:

- the changes it has already implemented to improve employees' conditions and the efforts made to invest in partners;
- The company's ongoing commitment to 'further 'constructive dialogue that furthers our collective goal of creating long-term value for all stakeholders'; and
- the steps taken to refresh the board which is described as 'diverse, engaged, and independent...with a balanced mix of experience, skills, and perspectives'.

Starbucks' statement gives no formal indication of the company's views on the three SOC nominees merely stating that it:

'will review SOC Investment Group's proposed director nominee[s] in accordance with its normal process, and the Board will present its formal recommendation regarding director nominees in the Company's proxy statement and other materials to be filed with the Securities and Exchange Commission'.

[Sources: Starbucks SEC Filings: SOC statement; Response to SOC]

Failing to follow through on commitments to tackle racial inequality? Civil rights and racial equity organisations urge companies to meaningfully deliver on their commitments to conduct racial equity audits

In the aftermath of the murder of George Floyd in 2020, a number of US companies made public commitments to support racial justice/address racial inequality through conducting racial equity audits. In the years since, racial justice and civil rights organisations have stepped up pressure on these organisations to deliver on their commitments.

Seven organisations - Color Of Change, Community Change, Hip Hop Caucus, Majority Action, Open Mic, the Service Employees International Union, and UltraViolet Action – sent letters to [19 companies](#) in 2022 urging them to ensure that racial equity audits were conducted with an appropriate level of rigour and transparency and communicating their shared expectations around what this should entail.

The organisations have issued a [statement](#) flagging concern that though the companies have committed to, or are in the process of completing, racial equity audits 'the vast majority' have not proactively identified and engaged with those who are disproportionately impacted by racial inequity at or by the companies – ie Black, Indigenous and people of colour stakeholders.

Renaye Manley, Deputy Director of Strategic Initiatives at Service Employees International Union comments:

'Racial equity audits can only succeed when key stakeholders and shareholders representing impacted communities are included in the process. This ensures that the voices and experiences of those impacted by corporation decision-making are heard, and that the financial risk created by systemic racism in and beyond the corporation is properly assessed...Leaders have called on companies to engage advocates, civil rights experts, and shareholders in transparent audits, and now is the time to hold corporations to their racial justice commitments made in 2020.'

The groups have also expressed disappointment in the lack of support from the largest four asset managers – BlackRock, Vanguard, State Street and Fidelity – on racial equity issues over the 2023 proxy season [citing a report](#) from Majority Action and SEIU earlier this year showing:

'a largescale failure to account for racial equity in the four asset managers' proxy voting policies and practices negatively impacting shareholders' proposals around racial equity audits, racial and ethnic board diversity, political spending and lobbying activity, human capital management, tech oversight, environmental justice and board responsiveness'.

[Sources: Joint media release Majority Action, SEIU, Hip Hop Caucus, Color of Change November 2023]

Human-capital related shareholder proposals 'among the best performing' shareholder ESG proposals of 2023

Analysis by Diligent Market Intelligence of voting outcomes on shareholder proposals during the 2023 US proxy season has found that investor support for proposals on a range of human-capital related issues – freedom of association, diversity disclosure, disclosure of gender/ethnic pay gaps etc – secured higher levels of investor support relative to shareholder proposals on other ESG issues.

In particular, Diligent singles out 'freedom of association' proposals - ie proposals aimed at safeguarding employees' right to form trade unions – as being 'among the best performing ESG proposals of the 2023 season'.

Nine proposals of this kind won 35.5% average support, up from just one proposal of the same kind winning 38.9% support a season prior while one proposal filed at Starbucks secured 52% support.

[Note: For context, The Conference Board puts the average level of support for shareholder ESG proposals at just 23% in 2023 (down from 31% in 2022).]

Human rights policies proposals, DEI disclosure and gender/ethnicity pay gap also secured higher levels of investor support than other categories of shareholder ESG proposals.

Interestingly, Diligent also found that some investors significantly increased their support of shareholder ESG proposals between 2022 and 2023 (contrary to the overall trend). Australian Retirement Trust is identified as one of these investors - according to Diligent Australian Retirement Trust supported just 29.4% of proposals at Russell 3000 companies in 2022 increasing to 68.6% of proposals in 2023.

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 30/11/2023]

In Brief | Sovereign Green Bonds: Ahead of the first issue of green bonds (which is expected in mid-2024), the Australian government has released the Green Bond Framework which sets out the basis for identifying, selecting, managing, and reporting on expenditures financed with green bonds

[Sources: Australian Office of Financial Management: Green Bond Program; Green Bonds; Australian Government Green Bond Framework December 2023]

In Brief | Promoting integrity in voluntary carbon markets: US regulator the CFTC is consulting on draft guidance for the listing of voluntary carbon credit derivative contracts

[Source: CFTC media release 04/12/2023]

In Brief | The government has established a new Nature Finance Council to 'increase private sector financial flows to benefit Nature'. The Council's first work plan is planned for release in 'early 2024'

[Source: Department of Climate Change, Energy, the Environment and Water media releases: 04/12/2023; 04/12/2023]

In Brief | Climate Change - Science Snapshot for directors released: The AICD, together with the CSIRO, have released a new resource that aims to provide directors with a high level picture of the latest information on the potential impacts of climate change on Australia and its industries

[Source: AICD/CSIRO Climate Change – Science Snapshot 2023]



Financial Services

Top Story | Submission on reforms to digital asset platforms regulation

MinterEllison has lodged a [submission](#) with Treasury in response to the release of a [Proposal Paper](#) detailing reforms to the treatment of digital asset platform providers released in October 2023. This submission follows [our summary of the proposed reforms](#), together with a more [detailed overview](#).

You can access the full text of the submission on our website here: [Submission on reforms to digital asset platforms regulation - Insight - MinterEllison](#)

Top Story | Government delivers FFSP to Parliament

On 30 November 2023, the government introduced new Bills – [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023 \(Cth\)](#) and [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023 \(Cth\)](#) - into Parliament which would, among other things, implement changes to the licensing exemptions for foreign financial service providers (FFSPs). This follows consultation on an [exposure draft](#) (Exposure Draft), which is summarised in our [previous alert](#).

MinterEllison has released an article outlining the key FFSP-related changes included in the Bill in an article here: [Government delivers FFSP to Parliament - Insight - MinterEllison](#)

Outlook

At this stage, the Bill is likely to be referred to a parliamentary committee for consideration, at which point there is likely to be further opportunity to make submissions.

It is also possible that the Bill will be amended before it becomes law. We do not expect the Bill to be passed before the end of the year.

New Bills propose to reduce the frequency of FRAA reviews, enact updates to the payments system regulatory framework and enact FFSP licensing

On 30 November 2023, the government introduced new Bills – [Treasury Laws Amendment \(Better Targeted Superannuation Concessions and Other Measures\) Bill 2023 \(Cth\)](#) and [Superannuation \(Better Targeted Superannuation Concessions\) Imposition Bill 2023 \(Cth\)](#) - into Parliament.

Broadly, if enacted in its current form, the Bills would:

- Implement changes to the licensing exemptions for foreign financial service providers (FFSPs) (Schedule 7). Read: [Government delivers FFSP to Parliament - Insight - MinterEllison](#)
- Reduce the tax concessions on total superannuation balances which exceed \$3 million (Schedules 1-3 to the Bill)
- Enable the Commissioner of the Australian Charities and Not-for-profits Commission to make disclosures about new or ongoing investigations where the disclosure would prevent or minimise the risk of significant harm (Schedule 4)
- Reduce the frequency of the Financial Regulator Assessment Authority's (FRAA's) review of the Australian Securities and Investments Commission (ASIC) to every five years (Schedule 5)
- Amend various Treasury portfolio laws to ensure they are 'in accordance with their policy intent, make minor changes to improve administrative outcomes and remedy unintended consequences, as well as correcting technical and drafting defects' (Schedule 6)
- Amend the payments system regulatory framework to 'address the risks posed by new and emerging technologies'. In his second reading speech, Assistant Treasurer and Minister for Financial Services Stephen Jones summed up the proposed changes in Schedule 8 as follows:
 - expand the definitions of 'payment system' and 'participant' ;to ensure the Reserve Bank of Australia has the ability to regulate all participants and payment systems, including digital wallet providers and buy-now pay-later service providers'.

- introduce new ministerial designation powers to 'allow the Treasurer to designate payment services or platforms that present risks of national significance, allowing them to be subject to additional oversight by the appropriate regulators'.
- give 'the Reserve Bank of Australia greater powers to regulate a broader range of players in the payment system, as well as extending these powers to other relevant regulators where there is a material risk to the "national interest"'. These changes will modernise our payment regulation framework to ensure that it is fit for purpose, now and well into the future.

Next steps

As flagged in the previous article above, given the current parliamentary sitting calendar it is unlikely the Bill will not be passed before the end of 2023.

[Sources: Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023 (Cth); Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023 (Cth)]

Government pushes ahead with RBA reforms

Implementation of the government's response to the RBA Review

[Treasury Laws Amendment \(Reserve Bank Reforms\) Bill 2023 \(Cth\)](#) was introduced into the House of Representatives on 29 November 2023. The Bill proposes to partially implement the government's response to the Reserve Bank Review (RBA Review) announced on 20 April 2023.

Broadly, the changes in the Bill would do five things:

- Remove the government's power to override the RBA's monetary policy decisions
- Remove the RBA's power to 'direct the lending activity of private banks'
- Establish a Monetary Policy Board to '[determine](#) monetary policy – including the setting of interest rates' - and a separate Governance Board
- Establish an 'overarching objective for the RBA' (which is distinct from the objectives of monetary policy) to: 'promote the economic prosperity and welfare of the people of Australia, both now and into the future'
- 'Clarify' the objectives of monetary policy: The Bill would 'clarify that the RBA's objectives for monetary policy are a dual mandate to contribute to price stability and full employment. The Monetary Policy Board must exercise its function to determine the monetary policy of the RBA in a way that best contributes to price stability and full employment in Australia'.

Proposed Timing

The changes are proposed to commence on the later of 1 July 2024 or '[the first](#) day of the next calendar month following the end of the period of three months starting on the day after Royal Assent'.

New Deputy Governor appointed

The government has [appointed](#) Andrew Hauser (currently Executive Director of the Markets Directorate, Bank of England) as Deputy Governor of the Reserve Bank of Australia (RBA) for a five-year term. No commencement date is specified. The government's states that it intends to 'work with the RBA to ensure Mr Hauser can commence his role as soon as possible, with the expectation that he will start ahead of the first Reserve Bank Board meeting next year'.

[Source: Treasurer Jim Chalmers media releases: 27/11/2023; 27/11/2023; Minister's second reading speech; Treasury Laws Amendment (Reserve Bank Reforms) Bill 2023 (Cth); Explanatory Memorandum]

APRA is consulting on draft 'minor updates' to the capital framework for ADIs

The Australian Prudential Regulation Authority (APRA) is consulting on draft 'minor updates' which are described as 'technical in nature' to the following standards and guidance. The links below link through to APRA's proposed updates in markup.

- [Prudential Standard APS 112 Capital Adequacy: Standardised Approach to Credit Risk \(APS 112\)](#)

- Prudential Standard APS 113 Capital Adequacy: Internal Ratings-based Approach to Credit Risk (APS 113)
- Prudential Practice Guide APG 110 Capital Adequacy (APG 110)
- Prudential Practice Guide APG 112 Capital Adequacy: Standardised Approach to Credit Risk (APG 112)
- Prudential Practice Guide APG 113 Capital Adequacy: Internal Ratings-based Approach to Credit Risk (APG 113)
- Reporting Standard ARS 110.0 Capital Adequacy (ARS 110.0)
- Reporting Standard ARS 112.0 Capital Adequacy: Standardised Approach to Credit Risk (ARS 112.0)
- Reporting Standard ARS 113.0 Capital Adequacy: Internal Ratings-based Approach to Credit Risk (ARS 113.0)
- Reporting Standard ARS 115.0 Capital Adequacy: Standardised Measurement Approach to Operational Risk (ARS 115.0)

Details of the proposed revisions are listed in [Annex A to APRA's letter to industry](#).

APRA [states](#) that:

'The aim of these minor updates is to address specific implementation issues raised by industry in applying the new capital framework in practice. These changes are technical in nature; APRA is not adjusting any major policy settings or changing the overall calibration of the framework through this consultation'.

Timing and next steps

The due date for submissions is 8 March 2024

APRA envisions that the updated standards and guidance (once finalised) would apply from 30 June 2024.

[Source: APRA consultation: Revisions to the capital framework for authorised deposit-taking institutions December 2023 – Consultation on Minor updates to Capital Framework for ADIs 05/12/2023]

Financial Advisers: ASIC releases new guidance on registration requirements

From 1 February 2024 all relevant providers must be registered with the Australian Securities and Investments Commission (ASIC) to be able to provide personal advice to retail clients about relevant financial products.

Ahead of this deadline, ASIC [has released](#) two information papers providing guidance on the new requirements.

- Information Sheet 276 FAQs: Registration of Relevant Providers ([INFO 276](#)) provides guidance to Australian Financial Services (AFS) licensees and Relevant Providers about Stage 1 registration, the registration process, cessation of registrations and multiple registrations.
- Information Sheet 277 Registration of Relevant Providers: Guidance on Making Declarations ([INFO 277](#)) provides guidance to AFS licensees about: who is a 'relevant provider', submitting the registration application form, making 'fit and proper' declarations and 'professional standards' declarations.

ASIC will also host webinars on the 6th and 7th of December to provide more information to AFS licensees and Relevant Providers about the new registration requirement.

ASIC has encouraged AFS licenses to apply to register their Relevant Providers using ASIC Connect 'as early as possible' to ensure their Relevant Providers are registered before the 1 February 2024 deadline.

[Source: ASIC media release 28/11/2023]

ASIC and AFCA sign memorandum of understanding

The Australian Securities and Investments Commission (ASIC) and Australian Financial Complaints Authority (AFCA) [have signed](#) a memorandum of understanding (MoU)

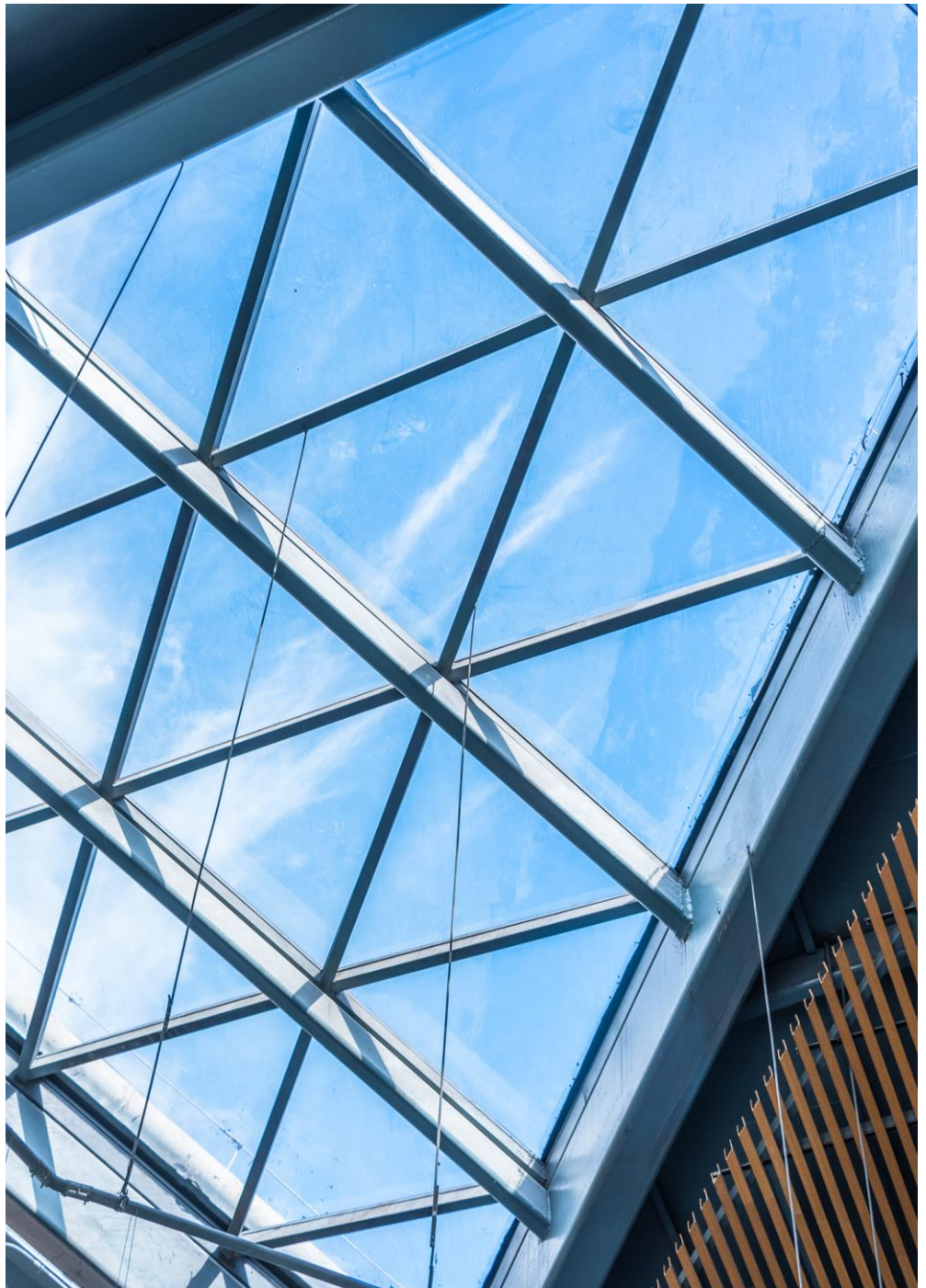
'how ASIC and AFCA already engage, and will continue to engage, including through information sharing and other forms of cooperation and coordination. It acknowledges the importance of consultation and cooperation in the effective discharge of their respective responsibilities and governs the administrative arrangements between them'.

[Source: ASIC media release 04/12/2023]

Enhancing transparency in super, improving retirement outcomes: ASIC's continuing focus

In her [30 November address](#) to the 2023 ASFA Conference Panel Discussion, Australian Prudential Regulation Authority Executive Director of Superannuation Carmen Beverley-Smith said that:

- While APRA is 'encouraged by the industry's commitment to improving member outcomes' the regulator has no plans to 'slow its efforts to foster a more resilient, more sustainable, member-focused super industry. We are committed to working closely with peer regulators and industry bodies, including ASFA, to address pressing issues with urgency'.
- 'Enhancing transparency in super is a continuing area of focus for APRA'. Looking ahead, APRA intends to build on existing measures through:
 - publishing 'a comprehensive transparency package covering investment returns, fees and performance test metrics...soon after the annual performance test' from next year
 - progressing the Superannuation Data Transformation project - APRA is consulting on the second phase of the Superannuation Data Transformation to strengthen data collection in areas including trustee board governance and investment valuation and liquidity management.
 - Ms Beverley-Smith said that APRA would like to publish 'as much of the data we collect as possible' in the interests of increasing transparency. APRA is 'currently consulting with industry on how we publish total fund expenditure and expanded asset allocation data by mid-2024'
- Prudential areas of focus for 2023-24: APRA's priorities for industry include:
 - ensuring sound investment governance practices, particularly in relation to asset valuation and liquidity risk management



- uplifting operational resilience including in cyber security and technology
 - addressing product under-performance
 - understanding trustee progress in managing climate-related financial risks
 - embedding recovery, exit and resolution planning
 - preparing for implementation of the Financial Accountability Regime in superannuation in 2025
 - improving retirement incomes
- Improving retirement incomes:
 - Following the release of the joint (with the Australian Securities and Investments Commission (ASIC)) Retirement Income Covenant review – [Report 766 Implementation of the retirement income covenant: Finding from the APRA and ASIC thematic Review](#) – in July, trustees were asked to consider their own retirement incomes approaches and to 'address any shortcomings'. Trustees have now been asked to complete a survey about the self-assessments they have undertaken by 9 February 2023.
 - One of the 'shortcomings' identified in REP 766 was the 'lack of measures in place to assess the quality of retirement outcomes being provided to members' with little difference observed between the evaluation methods used to assess retirement product outcomes and used to assess choice accumulation product outcomes. On this point, Ms Beverley-Smith said that 'trustees may want to consider taking a more nuanced approach for retirement products that is more closely aligned to the needs of retirees'.
 - Other issues: Mr Beverley-Smith added that 'we need to address a range of pressing issues and vulnerabilities with urgency. We must also ensure the industry scales appropriately and remains operationally resilient'. The following were identified as areas of focus: delivery of member services eg death benefit processing, complaint handling, cyber and fraud risks.

[Source: APRA executive Director of Superannuation Carmen Beverley-Smith 2023 ASFA conference Panel Discussion 30/11/2023]

Retirement income review: Discussion paper released

The government has released a [discussion paper](#) seeking stakeholder views on 'how to improve the retirement phase of superannuation'.

Announcing the launch of the consultation, Treasurer Jim Chalmers highlighted members' concern over outliving savings together with lack of access to 'appropriate products' eg annuities as key issues to address.

(Very) broadly, the discussion paper seeks feedback on three key areas:

- How best to support people to navigate the retirement income system and plan their retirement income. The consultation paper suggests that
 - 'increasing or changing the way funds and government communicate to members about their superannuation could enable members to make the mindset shift necessary to confidently draw down on their superannuation in retirement'.
- How funds can deliver 'better retirement income products and services'
- How lifetime income products could be made more accessible.

Timing: The due date for submissions is 9 February 2024.

[Source: Treasury Consultation: Superannuation in retirement: 04 December 2023 - 09 February 2024]

Inquiry into Bank Closures: Key takeaways from ASIC's opening statement

On 8 February 2023, an [inquiry](#) into regional bank closures was referred to the Senate Rural and Regional Affairs and Transport References Committee.

Appearing before the Committee on 1 December 2023, Australian Securities and Investments Commission (ASIC) Commissioner Alan Kirkland [used his opening address](#) to flag that ASIC considers, based on insights/learning gained through its Indigenous Outreach Program, that there are 'potential opportunities for a range of stakeholders' including banks to provide more accessible/inclusive banking services in regional/remote areas. Mr Kirkland suggested that this could include:

'adequate resourcing and service delivery through dedicated First Nations banking channels including First Nations call lines, regular regional pop-up banking services, and ensuring banking staff have appropriate levels of cultural competency training for engaging with their First Nations consumers'.

Mr Kirkland also noted that ASIC is currently consulting on proposed updates to the Australian Banking Association's Banking Code of Conduct, which includes a commitment for banks to comply with the ABA's Branch Closure Support Protocol – this sets out the steps banks need to follow when closing a branch.

[Source: ASIC Commissioner Alan Kirkland's Opening statement at the Rural and Regional Affairs and Transport References Committee's Inquiry into bank closures in regional Australia 01/12/2023]

In Brief | ASIC's successful court action over failure to deliver on pricing promises: The Federal Court has handed down a \$10 million fine against a general insurer over misleading statements included in certain product disclosure statements (PDS) about how certain policy discounts would be calculated/applied. Announcing this, ASIC reiterated that ensuring insurers deliver on pricing promises is an enforcement priority this year, and that it 'will continue to monitor marketing and pricing practices in the industry, and use the full range of regulatory tools available to protect consumers from general insurers failing to honour promised discounts.'

[Sources: ASIC media release 30/11/2023]

In Brief | APRA has released an information paper explaining its rationale for its decision to maintain existing macroprudential policy settings unchanged. To be clear, this means that the mortgage serviceability buffer will remain at 3%, and the countercyclical capital buffer will stay at 1% per of risk-weighted assets.

[Source: APRA Information Paper 04/12/2023]

In Brief | First 'comprehensive snapshot' of consumer payment behaviour post-COVID released: The RBA 2022 Consumer Payments Survey confirms cards or mobile devices are increasingly being used, even for small purchases – the share of in-person transactions made with cash halved from 32% to just 16% over the three years to 2022 is just 16% (down 50% in three years)

[Source: RBA discussion paper RDP 2023-08: The Evolution of Consumer Payments in Australia: Results from the 2022 Consumer Payments Survey November 2023]



Risk Management

Strengthening Privacy Protections: Digital ID Bills introduced

Two Bills – the [Digital ID Bill 2023 \(Cth\)](#) (Principal Bill) and the [Digital ID \(Transitional and Consequential Provisions\) Bill 2023 \(Cth\)](#) – were introduced into the Federal Parliament on 30 November 2023 and [referred](#) to the Senate Economics Legislation Committee for report by 28 February 2023.

Broadly, if enacted in their current form, the Bills [aim to](#):

'put in place the legislative framework to create an economy-wide Digital ID system in Australia...[this is to say a] secure, convenient and voluntary way to verify who you are online against existing government-held identity documents without having to hand over any physical information. Digital ID is not a card, it's not a unique number, nor a new form of ID'.

Broadly, the Principal Bill would do [four things](#):

- 'legislate and strengthen a voluntary Accreditation Scheme for digital ID service providers that wish to demonstrate compliance with best practice privacy, security, proofing and authentication standards;
- legislate and enable expansion of the Australian Government Digital ID System (AGDIS) for use by the Commonwealth, State and Territory governments and eventually private sector organisations;
- embed strong privacy and consumer safeguards, in addition to the Privacy Act 1988 (Cth) (Privacy Act) to ensure users are protected; and
- strengthen governance arrangements for the Accreditation Scheme and the AGDIS, including by establishing the Australian Competition and Consumer Commission (ACCC) as the Digital ID Regulator, and expanding the role of the Information Commissioner to regulate privacy protections for digital IDs. Both these regulators will have a broad range of powers under the Bill, including to issue civil penalties'.
- Digital ID (Transitional and Consequential Provisions) Bill 2023

The Digital ID (Transitional and Consequential Provisions) Bill 2023 is proposed to operate in conjunction with the Principal Bill and support the implementation/operation of the changes in the Principal Bill by enacting transitional and consequential arrangements that would ensure the '[orderly, efficient and fair transition to the new statutory framework under the Digital ID Bill 2023](#)'.

[Sources: Digital ID Bill 2023 (Cth); Digital ID (Transitional and Consequential Provisions) Bill 2023 (Cth); Minister's Second Reading Speech]

Scams: First round of consultation on proposed framework for mandatory industry Codes

Government focus on combatting online scams is continuing with the launch of a consultation on a proposed framework to roll out new sector-specific Codes

The government has released a [consultation paper](#) seeking feedback on its proposed framework for the introduction of planned new industry scam codes.

The due date for submissions is **29 January 2024**.

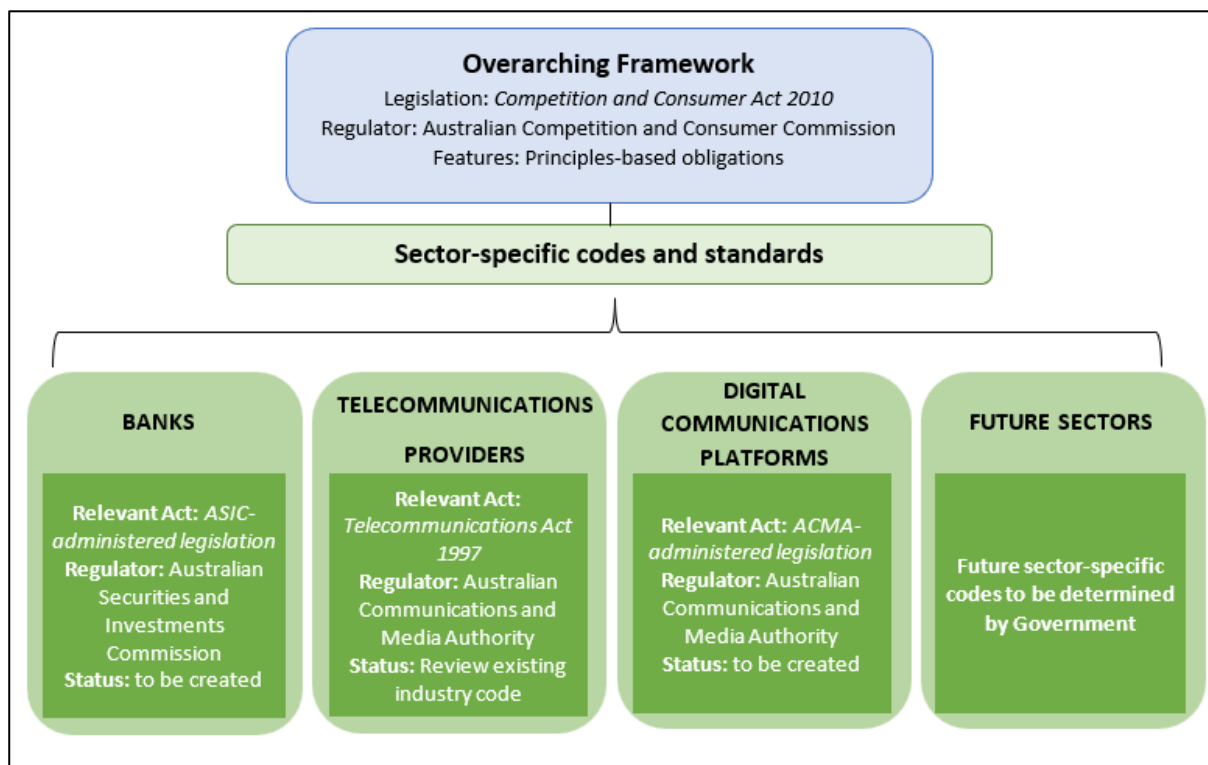
Here are our key takeaways.

What's being proposed?

It's proposed that a new overarching scam prevention regime would be legislated – potentially through the Competition and Consumer Act 2010 (Cth) (CCA) – which would set new mandatory obligations for businesses in designated sectors to take action to address scam activity.

In addition, new industry Codes and standards for designated sectors would also be developed which would include additional, sector-specific obligations on businesses to prevent, detect, disrupt and respond to scams.

The diagram below (which is included in the consultation paper) provides a snapshot of the proposed new framework.



[Source: Figure 1. Proposed Scam Framework – included at p8 of [Treasury's consultation paper](#).]

What does the proposed Framework aim to achieve?

The consultation paper states that:

'The primary objective of the Framework is to set clear roles and responsibilities for the Government, regulators, and the private sector in combatting scams. This includes ensuring that key sectors in the scams ecosystem have measures in place to prevent, detect, disrupt, and respond to scams, including sharing scam intelligence across and between sectors. Where a business does not meet its obligations under the Framework, where applicable, Internal and/or External Dispute Resolution mechanisms would ensure consumers have access to appropriate redress, and regulators would be given new enforcement and penalty powers. The Framework and other scams-related activity (such as through the NASC) [ie the National Anti-Scam Centre] will not eradicate all scams. However, the intended outcome is to make Australia a harder target for scam activity, and less attractive to scammers, therefore reducing scam losses and impacts'.

Which sectors would the new codes apply to?

Initially, it's envisioned that the new Codes would apply to:

'those most targeted by scammers – banks, telecommunications providers and digital communications platforms'

However, the consultation flags that the framework is being developed to enable additional sectors to (potentially) be included at a future date.

The consultation paper suggests that these sectors could include: the superannuation sector; digital currency exchanges (cryptocurrency); 'other payment providers'; and transaction-based digital platforms like online marketplaces.

What obligations might be included in the new Codes?

The consultation paper gives a number of examples sector-specific obligations under consideration for (potential) inclusion in sector-specific Codes aimed at strengthening industry's efforts to prevent, detect and disrupt and respond to scams.

Importantly, the consultation paper underlines that:

'The examples of obligations included in this paper are presented with the intention to gather preliminary feedback from industry on the obligations that could form part of the sector specific codes. Further detail will be worked through via ongoing engagement and consultation with industry to finalise obligations'.

Potential 'bank specific' obligations

A list of 'possible bank specific obligations' is included at p20 of the consultation paper. These include (among other things) obligations for banks to:

- enable confirmation of the identity of a payee to reduce payments to scam accounts.
- have processes in place to identify consumers at a higher risk of being targeted by scammers
- have in place processes and methods to detect higher risk transactions and warn consumers
- have in place methods or processes to identify and share information with other banks that an account or transaction is likely to be or is a scam
- have in place processes to act quickly on information that identifies an account or transaction is likely to be or is a scam, including blocking or disabling the scammer account or the transaction (if in the same bank) or working with the recipient bank to do so
- have user-friendly and accessible methods for consumers to immediately take action where they suspect their accounts are compromised or they have been scammed (eg an in-app 'freeze switch').
- assist a consumer to trace and recover transferred funds to the extent that funds are recoverable, including a receiving bank to revert a transfer within **24 hours** of receiving a recall request from a sending bank.
- respond to an information request from ASIC within the timeframe specified.

Other sectors: A list of 'possible' digital platform specific obligations is included at p 21 of the [Consultation Paper](#).

Under existing arrangements, telecommunications providers are already subject to the Reducing Scam Calls and Scam SMS industry code. It's proposed that this Code would be reviewed (and potentially strengthened). The consultation paper states:

'To remain consistent with the overarching scams obligations, the telecommunications industry body, Communications Alliance, would be asked to review this code in 2024 and consider what changes are required to improve the operation of the Code and ensure consistency with the Framework. If changes are required, Communications Alliance would need to update the code and the ACMA would consider it for re-registration. The ACMA can also use its powers, if required, to make industry standards or service provider determinations to meet Government and community expectations'.

Oversight, enforcement and compliance

Enforcement and compliance with overarching obligations

Broadly, (and as shown in the earlier diagram) it's proposed that the ACCC would have responsibility for monitoring and enforcing compliance with the obligations/other requirements set out in the CCA.

It's also envisaged that the ACCC could issue guidance to industry on best practices to comply with the framework.

Enforcement and compliance with industry-specific Code obligations

It's proposed that:

- ASIC would be responsible for monitoring compliance and enforcing the bank-specific code.
- The Australian Communications and Media Authority (ACMA) would be responsible for enforcing the digital communications platforms and telecommunications sector codes.
- Regulators responsible for enforcing future codes or standards would be determined by government on a case-by-case basis.
- It's suggested that the regulators' costs to 'administer any additional functions under the Framework may be recoverable through its Industry Funding Model and levies charged to industry'.

(Financial) Penalties for non-compliance

It's envisaged that where a regulated business failed to comply with their obligations under the framework financial penalties would apply with penalties for breaches of sector-specific obligations to be set under the sector-specific enabling legislation.

The consultation paper flags that:

'Consideration will be given to whether there should be consistency between penalties for breaches of sector-specific obligations and penalties for noncompliance with the principles-based obligations in the CCA, as well as consistency of penalties across sectors'.

In addition, the consultation flags plans to 'work through the necessary arrangements' to avoid two regulators taking simultaneous action against a breach under the framework during the legislative design stage.

[Source: Treasury Consultation: Scams – mandatory industry codes 0 November 2023 - 29 January 2024; Government announcement 30/11/2023]

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