A woman with curly hair, wearing a light-colored collared shirt, is looking down at a tablet computer she is holding. The background is a dimly lit office with blurred lights and equipment. A small red square is in the top left corner.

Governance News

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

13 December 2023

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Shareholder Activism

Mercy Investments targets 16 companies with shareholder resolutions on a range of ESG topics ahead of the 2024 proxy season

Mercy Investment Services has already filed 16 shareholder proposals at 16 companies – including major banks and pharmaceutical companies - on a range of environmental/sustainability and social issues, ahead of the 2024 proxy season. The proposals centre around three broad themes: 'healthy planet'; 'human rights and equity'; and 'healthy persons and communities'.

The table below provides a brief overview.

THEME	COMPANY TARGETED	PROPOSAL DETAILS
Human Rights and Equity	Texas Instruments	Exposure to human rights/other risks arising from product usage: The Proposal calls on the board of the semiconductor company to: 'commission an independent third party report...on Texas Instruments' due diligence process to determine whether customers' misuse of its products expose the company to human rights and other material risks'.
	Marriott International Inc	Human rights in conflict/high risk areas: The Proposal calls on the board of the hotel operator to: 'commission an independent third-party report...assessing the effectiveness of the company's implementation of its Human Rights Statement related to operations in conflict-affected and high-risk areas'.
	Apple Inc	Report on risks of services being used to facilitate online child exploitation: The Proposal calls on the company to: 'publish a report by March 2025, assessing risks of its products and services being used to facilitate online sexual exploitation of children, including metrics on the effectiveness of Apple's efforts such as the amount of CSAM transmission prevented annually, prepared at reasonable expense, excluding proprietary information'.
Healthy Persons & Communities	Pfizer Inc	Human Rights Due Diligence: The Proposal calls on: 'the board of directors to oversee conduct of human rights due diligence (HRDD) to produce a human rights impact assessment (HRIA) covering Pfizer's operations, activities, business relationships, and products. The HRIA should be...made available on Pfizer's web site.'
	Gilead Sciences Eli Lilly AbbVie Johnson & Johnson (JNJ)	Access to generic medicines: Separate but identical proposals at Gilead , Eli Lilly , AbbVie , and Johnson & Johnson call for the boards of the companies to: 'establish and report on a process by which the impact of extended patent exclusivities on product access would be considered in deciding whether to apply for secondary and tertiary patents.' Similar proposals were filed at the same companies (as well as at: Amgen, BMY, Merck, Pfizer, and Regeneron) in 2023. The 2023 proposals at Gilead secured 16.71% support , Eli Lilly secured 10.37 % support , AbbVie secured 29.56% support , and JNJ secured 14.42% support .
	Bristol-Myers Squibb	Human rights policy: The proposal calls on the board of the global biopharmaceutical company to:

THEME	COMPANY TARGETED	PROPOSAL DETAILS
		'adopt a comprehensive human rights policy, referencing internationally recognised human rights standards, that applies to both its own operations and its suppliers that includes the right to the highest attainable standard of physical and mental health and establishes a process to identify, prevent, mitigate, and remedy adverse human rights impacts, above and beyond supplier audits, including consultation with stakeholders'.
Healthy Planet	Wells Fargo	Client (Scope 3) GHG emissions: The proposal calls: 'for each of its sectors with a Net Zero aligned 2030 target, Wells Fargo annually disclose the proportion of sector emissions attributable to clients not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent Wells Fargo from meeting its 2030 targets, and actions it proposes to address any such emissions reduction shortfalls'.
	Bank of America	Client (Scope 3) GHG emissions: The proposal calls for the bank to: 'prepare and issue an assessment of the proportion of the bank's auto manufacturing, energy, and power sectors' emissions that are attributed to clients that the bank assesses are not aligned with a credible 1.5 degree Celsius pathway by 2030, whether this proportion of unaligned clients will prevent Bank of America Corporation from meeting its 2030 net zero targets, and actions it proposes to address any such emissions reduction shortfalls.
	BlackRock	Review climate voting record/policies: The proposal calls on BlackRock's board to: 'initiate a review of both BlackRock's 2023 proxy voting record and proxy voting policies related to climate change, prepared at reasonable cost, omitting proprietary information'.
	Archer-Daniels Midland (ADM)	GHG targets: The proposal calls on ADM to 'in addition to its existing targets and related disclosures, set and disclose long-term GHG reduction targets aligned with achieving science-based 1.5°C or net-zero emissions by 2050 at the latest, alongside the strategies to achieve these targets'.
	Tyson Foods, Inc.	Climate lobbying: The proposal calls on the company to 'conduct an evaluation and issue a report annually, beginning within the next year, describing if, and how, its lobbying, directly and through the activities of its trade associations and social welfare organisations, aligns with the company's science-based target and long-term net zero ambitions. The report should also address the risks presented by any misaligned lobbying and Tyson's efforts, if any, to mitigate these risks'.
	Kellanova	(Nature) Pesticide use in supply chains: The proposal calls on the company to report 'on the risks to the company associated with pesticide use in its supply chain'.
	Dow Inc	Virgin plastic: The proposal calls on the board to: 'issue an audited report addressing whether and how a significant reduction in virgin plastic demand, as set forth in Breaking the Plastic Wave's System Change Scenario to reduce plastic pollution, would

THEME	COMPANY TARGETED	PROPOSAL DETAILS
		affect Dow's financial position and assumptions underlying its financial statements'.

[Source: Mercy Investments 2024 shareholder resolutions (accessed 12/12/2023)]

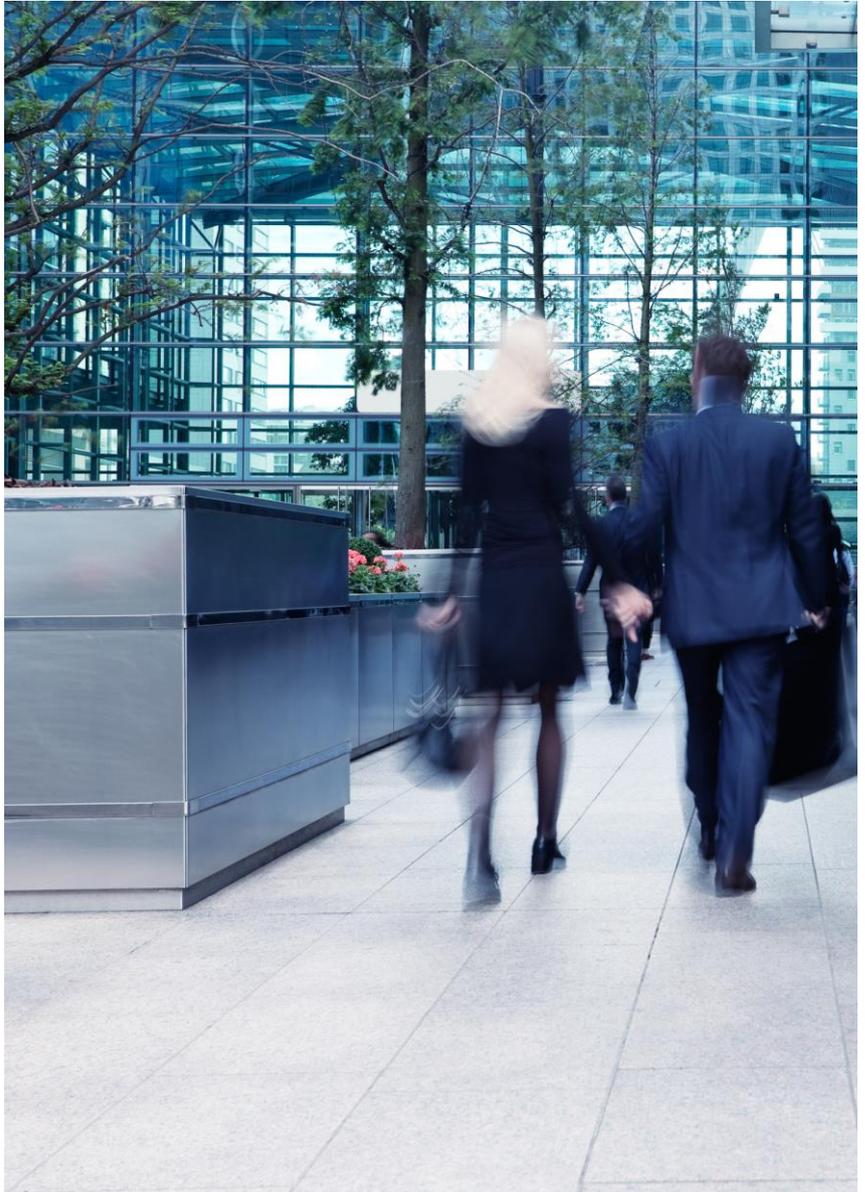
Political spending disclosure: AT&T releases report in partial exchange for the withdrawal of a shareholder proposal

- As You Sow has welcomed the release by telecommunications provider AT&T Inc of a new report - Political Congruency Report - providing aggregated information about the company's political expenditure as well as information about how Federal/State Officials who received financial backing from AT&T voted on legislation identified as important to the company's political priorities.
- As you Sow states that the report was released in partial exchange for the withdrawal of a shareholder proposal (filed by As You Sow) in April calling on the company to:

'publish a report...analysing the congruence of the Company's political and electioneering expenditures during the preceding year against publicly stated company values and policies, listing and explaining any instances of incongruent expenditures, and stating whether the Company has made, or plans to make, changes in contributions or communications to candidates as a result of identified incongruencies'.

- The proposal is part of a broader push by As You Sow on this issue:
 - over 295 shareholder proposals have been filed over the last three years requesting greater transparency from companies around their political spending and the extent to which this aligns with their publicly stated goals
 - the proposal was one of two similar proposals filed in 2023. The proposal at AbbieVie secured 15.1% support.
- As You Sow has expressed the hope that the release of the report by AT&T 'ushers in a new era of political spending disclosure and government affairs accountability'.

[Source: As You Sow media release 06/12/2023]



e-Waste: Green Century welcomes moves by Microsoft to extend security support but is pushing for the company to go further

Green Century [has welcomed](#) Microsoft Corporation's agreement to extend Windows 10 security updates to the estimated 330-400 million devices using Windows 10 past the original 14 October 2025 'End of Support' date set by the company, as a positive step towards minimising needless e-Waste.

Explaining the significance of this, Green Century President Leslie Samuelrich commented:

'Your computer shouldn't become trash just because it can't get a security update...Microsoft's move may save vital institutions like hospitals and schools billions of dollars and could prevent millions of functioning computers from becoming toxic e-waste.'

Green Century attributes the move by Microsoft to the filing of a shareholder proposal at the company (coordinated by Green Century).

Calls for Microsoft to go further

Microsoft's new Extended Security Update (ESU) program will cost a fee – the details of which are yet to be released. The plan for commercial customers will be available for three years. The plan for consumers will be initially available for a year only.

On this point, Green Century (and others) have raised concerns that the cost could 'be a barrier to access' and potentially limit the program's expected positive environmental impact. Green Century has called on the company to limit the cost as far as possible.

[Source: Green Century media release 05/12/2023]

Shareholders turn to court action in escalating dispute with Smith & Wesson over AR-15 rifles

A group of Catholic nuns – the Adrian Dominican Sisters, Sisters of bon Secours USA, Sisters of St Francis of Philadelphia and Sisters of the Holy Names of Jesus and Mary US-Ontario Province – have [filed a shareholder derivative lawsuit](#) against certain members of the Smith & Wesson board (including the company's President and CEO, and the Board Chair) and certain company officers.

Notably, they allege that:

'by [failing](#) to take action in response to numerous red flags concerning the risks of manufacturing, marketing and selling AR-15 rifles, the director defendants [and others] breached their fiduciary duties'.

These 'red flags' include (among others) the (alleged) failure of the directors/senior managers to effectively monitor/oversee or mitigate the (allegedly) foreseeable risks arising from Smith & Wesson's (alleged) 'violations' of various state/Federal laws banning AR-15 Rifles/marketing of AR-15 type firearms.

The case is an escalation of pressure on the company over a number of years – for example through the filing of shareholder proposals since 2018 - around its management of the reputational and financial risks arising from use of its products (AR-15 rifles) by (some) perpetrators of gun violence.

In a [statement](#) announcing their decision to take this step, the Sisters state:

'The company is intent on marketing and selling AR-15 rifles in whatever manner results in the most sales – even if the marketing is illegal and attracts a dangerous category of buyers, facilitates an unrelenting and growing stream of killings, and causes the company to face an ever-increasing and substantial likelihood of liability that threatens its long-term existence.

We call on Smith & Wesson to return to the practices of its first 153 years of existence when it held itself as a successful beacon of responsible gun ownership and did not manufacture, market, or sell military-grade, mass-killing assault weapons. We pray for an end to the AR-15 mass shootings that have stolen the lives of so many innocent people and devastated communities across the nation.

[Sources: Joint media release: Sisters of bon Secours USA, Adrian Dominican Sisters, Sisters of St Francis of Philadelphia and Sisters of the Holy Names of Jesus and Mary US-Ontario Province 05/12/2023; Court filing]

Disclosure and Reporting

Top Story | ACCC releases final environmental claims guidance

Following consultation, the Australian Competition and Consumer Commission (ACCC) has released its long awaited guidance on environmental claims in final form. The guidance establishes eight key principles to follow when making environmental and sustainability claims.

You can find our detailed overview and discussion here: [ACCC releases final environmental claims guidance - Insight - MinterEllison](#)

Top Story | Sustainability collaboration under competition law

The New Zealand Commerce Commission (NZCC) has released guidelines on the application of competition law to collaboration on sustainability initiatives.

Australia does not have any such sustainability guidelines but we expect the ACCC may follow other international regulators and release proactive guidance in 2024.

Read more here: [Sustainability collaboration under competition law - Insight - MinterEllison](#)

Greenwashing | UK regulator launches investigation into consumer goods company as part of broader greenwashing sweep

The UK Competition and Markets Authority (CMA) has [announced](#) it is examining claims made by consumer goods group Unilever after an initial review of environmental claims made about certain products identified 'a range of concerning practices'. The CMA's 'concerns' include:

- Use of 'vague and broad' statement and language which 'may mislead shoppers regarding the environmental impact' of certain products
- Potential exaggeration of how 'natural' ingredients in certain products are which 'may create an inaccurate or misleading impression'
- Focus on a single aspect of a product (rather than the product as a whole) which may suggest it is more environmentally friendly than is the case
- Certain claims eg about the recyclability of products which 'may be unclear, as they fail to specify whether they relate to all or part of a product, or packaging'
- Use of certain colours/imagery eg green leaves which 'may create the overall impression that some products are more environmentally than they actually are'.

For clarity, at this stage, the CMA is 'at the initial stage' of its investigation – no findings have been made.

An area of continuing focus

The investigation is part of the CMA's broader investigation into greenwashing, including 'green' claims made about essential, daily items (fast-moving consumer goods (FMCG)). The regulator states that since commencing this work earlier this year, it has observed 'some positive changes' in the sector including the removal of some 'green' claims by suppliers.

The CMA cautions that while it has not opened official investigations into other companies as yet, 'its work is ongoing and new investigations may follow'.

[Source: CMA media release 12/12/2023]

NBIM supports proposed new global standard for sustainability assurance, ISSA 5000

- Consultation on the International Auditing and Assurance Standards Board's (IAASB) draft over-arching sustainability assurance standard – [\[Draft\] ISSA 5000 General Requirements for Sustainability Assurance Engagements](#) – which is intended to provide a global baseline for sustainability assurance – closed on 1 December 2023.

- For context, Draft ISSA 5000 is a principles-based standard, intended for use by accountant and non-accountant assurance practitioners when performing sustainability assurance engagements, which sets out general requirements for sustainability assurance engagements.
- The IAASB has [said](#) it intends to develop and issue the standard, in final form before the end of 2024.

NBIM supports the proposed approach

- In a [short letter](#), Norges Bank Investment Management (NBIM) expressed its support for the proposed approach in Draft ISSA 5000.
- In doing so, NBIM underlined both the important role that assurance over sustainability disclosures is expected to play in boosting the reliability/credibility of sustainability-related disclosures over time, and the shift already taking place in light of this. NBIM writes:

'A growing number of corporates are obtaining external assurance on their sustainability reports, and several jurisdictions have already adopted or are considering a requirement for mandatory assurance. Reliability and credibility of information provided in companies' sustainability reports are crucial for us. As an investor, we currently rely on our portfolio companies' internal

governance processes to enhance the reliability of sustainability reporting. While recognising that it is still not common market practice in most jurisdictions, we believe that assurance of sustainability reporting has a key role to play in improving this reliability over time. We have recently strengthened our climate change expectations of portfolio companies, and **now expect them to seek reasonable assurance of their Scope 1 and Scope 2 emissions at a minimum** [emphasis added]. NBIM therefore welcomes the IAASB's objective to establish a global standard for sustainability assurance engagements, which can play a key role in enhancing the quality of the information provided to markets and used by investors and other stakeholders'.

[Source: NBIM letter to the International Auditing and Assurance Standards Board 01/12/2023]



In Brief | Greenwashing: The Governance Institute of Australia has released a new anti-greenwashing guide for governance professionals. The guide provides grounding in what greenwashing is, the many forms it can take, the risks associated and offers practical insights into how these risks can be managed

[Source: Greenwashing: a governance perspective December 2023]

In Brief | The International Federation of Accountants (IFAC) has announced plans to consult in March 2024, on proposed revisions to the International Education Standards (IES) aimed at 'bring[ing] greater focus to sustainability reporting and assurance competence and recognis[ing] the evolving role of professional accountants in this important area'

[Source: IFAC media release 11/12/2023]

Institutional Investors and Proxy Advisers

Railpen releases updated voting policy for 2024

Railpen has released its [updated voting policy for 2024](#). Notable changes (which will apply for the 2024 AGM season) include:

- **Strengthened expectations around climate disclosures:** Railpen expects companies to 'comply with the ISSB standards for climate disclosure and best practice in transition planning as per the UK TPT guidance'. Announcing the release of its 2024 voting policy, Railpen comments that – '[companies](#) should use IFRS S1 and S2 disclosure requirements on sustainability- and climate-related risks as a minimum'. Where expectations are not met, Railpen may vote against the Chair, the director considered responsible or the Report and Accounts.
- **'Just transition' expectations:** Railpen states that it will 'look for companies to integrate just transition considerations into their overall climate change approach and disclosures'. From a voting perspective, Railpen writes that

'As well as integrating just transition considerations into our assessment of climate transition plans and disclosures, we will consider supporting resolutions that encourage better disclosure of just transition considerations, and better management of the risks and opportunities surrounding the just transition'.
- **Late or outstanding payments to small/medium suppliers may attract voting sanctions:** From 2024, UK companies that have 'since 2018 been consistently and each year paying its [small and medium sized] suppliers late, or has a record of outstanding payments', could face 'voting sanctions'. This could take the form of a vote against the Report and Accounts and/or a vote against 'any relevant executive directors' standing for election.
- **'Dual class enablers':** Railpen states that it

'will continue to support "one share, one vote", and - for all new company IPOs with dual-class share structures and a sunset clause of more than 20 years from the date of the IPO – be minded to vote against the election of all individual board members both in their capacity as a director at that company and at any other company where these individuals hold a board seat. This aligns with Railpen's role as co-founder and chair of the \$2.5 trillion Investor Coalition for Equal Votes (ICEV)'.

[Sources: Railpen media release 12/12/2023; Railpen Global Voting Policy 2024]

Updated ACSI governance guidelines set expectations for companies on key ESG issues including nature/biodiversity, climate and board oversight of cyber (among other issues)

Influential proxy adviser, the Australian Council of Superannuation Investors (ACIS) has released [updated Governance Guidelines](#) setting out its expectations of companies on a range of 'financially material' ESG issues.

Key updates, highlighted by ACSI include the following.

ISSUE	EXPECTATIONS
Nature and Biodiversity	<ul style="list-style-type: none">▪ ACSI expects companies to identify, mitigate and disclose material financial risks arising from its impacts and dependencies on nature with the expectation that companies 'work towards alignment with the guidance of the Taskforce on Nature-related Financial Disclosures (TNFD) framework'.▪ More specifically, ACSI recommends that where a company's impacts and dependencies on nature present material financial risks they disclose:<ul style="list-style-type: none">– 'in line with the TNFD framework as far as possible, with a timeline for increasing implementation of the framework– how biodiversity and nature considerations are factored into their corporate strategy and governance– any nature or biodiversity science-based targets they have or will have in place over various time horizons– how, or whether, the company's strategy and targets are aligned to the Global Biodiversity Framework, including any actions a company may be taking to halt and reverse biodiversity loss; and

ISSUE	EXPECTATIONS
	<ul style="list-style-type: none"> – where applicable; a target, plan, and timeline for assessing deforestation risk and where applicable, ensuring their operations or supply chain are free from deforestation'.
Climate-related Risks	<p>ACSI has updated its expectations and guidance around how companies are expected to consider climate-related risk. These updates include encouraging companies to:</p> <ul style="list-style-type: none"> ▪ disclose their transition plans, including how they is supporting a just transition for affected workers and communities (as well as setting expectations around the information that transition plans should include) ▪ disclose information about their use of/reliance on carbon offsets including the level of board oversight of the use of offsets ▪ disclose their exposure to material 'circular economy' risks and opportunities including resource use and waste management.
Cyber Security	<p>ACSI has set new expectations around board oversight and governance of cybersecurity including that companies consider disclosing (among other things):</p> <ul style="list-style-type: none"> ▪ 'their governance processes with regard to cyber and information security' ▪ 'the role of the board and level of board oversight of cyber security (including how a board is notified of a cyber security or data breach)' ▪ 'the digital security expertise held by a director and/or the external expertise the board has access to for advice and assurance'
Worker safety	<p>ACSI's updated guidance provides 'more detailed expectations of companies' around worker safety disclosures and references the 'importance of companies considering mental health, contractor safety and sexual harassment'.</p> <p>The two tables included at p36 of the guidance set out ACSI's expectations around disclosures around worker safety and sexual harassment.</p>
Diversity	<p>ACSI has updated its guidance to reflect its latest gender diversity policy which provides that ACSI will consider (on a case by case basis) recommending its members vote against board members of ASX 300 companies where the board does not include 30% women.</p> <p>The updated guidelines also 'emphasise board responsibilities working to prevent and respond to sexual harassment in the workplace under the Respect@Work Positive Duty'.</p>
Executive Remuneration	<p>ACSI has also 'streamlined' its guidance on remuneration to emphasise the importance of transparency and the need for a clear link between pay and the delivery of strategy/long term value creation.</p> <p>Commenting on these changes, ACSI Chair Louise Davidson said:</p> <p>'The record number of strikes against remuneration reports this year is a clear reminder that shareholders are watching outcomes closely, and there is a need to better link incentives to the delivery of value to shareholders over the long-term. We hope that our new guidelines assist companies to make necessary changes where that link is broken'</p> <p>Need to 'supplement' the two strikes rule? The updated guidance also flags ACSI's position that 'the [advisory] vote on the remuneration report and the two strikes rule should be supplemented with a binding vote on pay policy every three years'.</p> <p>[Note: For context, the 'two strikes rule' in Australia 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).]</p>

[Source: ACSI media release 12/12/2023; ACSI Governance Guidelines (11th Edition) December 2023]

ESG

Top Story | Landmark ACCC determination on proposed acquisition of Origin Energy

MinterEllison has released an article discussing the significance of the ACCC's landmark determination authorising Brookfield and MidOcean's proposed acquisition of Origin Energy.

Though Origin Energy shareholders ultimately voted to reject Brookfield and MidOcean's bid, the MinterEllison team considers that the ACCC's authorisation remains a significant development in terms of how action to address climate change can be considered in competition law.

You can access the full text of the article here: [Landmark ACCC determination on proposed acquisition of Origin Energy - Insight - MinterEllison](#)

Accelerating the shift away from coal in steel production: Global coalition of 67 organisations calls on banks to end financing of new metallurgical coal projects

- A [global coalition](#) of 67 organisations (led by BankTrack and Reclaim Finance) has released an [open letter](#), calling on 50 of the world's largest banks (including four [Australian banks](#)) to end all financial support for new metallurgical coal production and expansion. For context, metallurgical coal is primarily used in steel production.
- The coalition members consider that banks 'must actively take part in decarbonisation efforts for the steel sector, by refusing to perpetuate the sector's reliance on coal'. They also submit that continued financing of new metallurgical coal projects is [unnecessary](#) because: a) existing sources of metallurgical coal production are sufficient to cover demand through to 2050 and; b) research suggests that 'a full coal phase out in steel production is technologically feasible "by the early 2040's"'.
 - Specifically, the letter calls on banks to:
 - 'end all dedicated financial services, including advisory services to metallurgical coal projects [ie 'new metallurgical coal mines; the expansion of existing ones, and all related infrastructure']'
 - commit to 'no longer provide financial services to companies that have plans to develop or are developing metallurgical coal projects...[including] no longer providing services to companies that do not have a detailed asset-by-asset and mine-by-mine closure (and not selling) timetable aligned with a 1.5°C scenario, and a just and sustainable transition and decommissioning plan for workers, local communities, and the environment'
 - increase 'lending to key enabling sectors for the steel industries transition'. Further to this point, the letter underlines that:

'Decreasing demand for met coal requires that banks support their steel-producing clients' transition to fossil free technologies, by providing credit for such a transition but also by making the availability of this credit conditional on steel companies committing to a time bound transition plan'.

- Coalition members have requested a response from banks by 31 January 2024.

[Sources: BankTrack media release 07/12/2023; Open Letter]

Supporting sustainability efforts/climate adaption in the Pacific: Australian government announces new measures

The Australian government has announced a range of measures to increase support for the Pacific. These include:

New funding for climate projects in the Pacific: The government has [announced](#) it will both:

- contribute 'a foundational **\$100 million** to the Pacific Resilience Facility' (PRF) – a Pacific Led Pacific-led, financing facility to support small scale climate projects across the Pacific region eg disaster preparedness
- re-join and contribute **\$50 million** to the Green Climate Fund (GCF) a global climate fund established as part of the Paris Agreement to 'effectively advocate for GCF funding to meet Pacific needs'.

Calls for the government to go further: Responding to this announcement, Head of Advocacy at Greenpeace Australia Pacific, Dr Susie Byers, [acknowledged](#) the finance package as a good first step, but urged the Australian

government to go further by committing to both phasing out fossil fuels and making a fair contribution to the newly agreed Loss and Damage fund. Dr Byres commented:

'This finance package, while welcome, is a down payment on the real action required to meet our responsibilities as a major contributor to the climate crisis globally. It does not negate our obligation to make fair payments to the Loss and Damage fund, a hard-fought victory at COP27 that will help support those countries least responsible for creating the climate crisis to deal with its impacts...We can not afford another COP without radical action and a commitment to phase out fossil fuels globally. Australia must help fill the Loss and Damage fund and outline a clear, ambitious plan to phase out fossil fuels for good.' Greenpeace has welcomed the funding.

On Australia's financial contribution to the Loss and Damage Fund, a number of organisations - Oxfam Australia, The Climate Action Network Australia, ActionAid Australia, Caritas Australia and Edmund Rice Centre for Justice and Community Education – have [jointly called](#) on Australia to make an initial **\$100 million pledge** to the fund.

Pacific Islands Climate Action Network Regional Coordinator Lagi Seru also [welcomed](#) the two announcements but underlined that:

'It is an expectation that Australia will play its part, given its outsized contribution to the climate crisis, as a major fossil fuel producer, and these commitments are a step in the right direction, responding to the decades of calls from the Pacific for Australia to demonstrate real climate action, and this extends to the call to phasing out fossil fuels, and domestic fossil fuel subsidies'.

CSIRO and SPREP to build on existing partnership to help tackle environmental challenges in the Pacific region:

Separately, CSIRO has [announced](#) that a five year Memorandum of Understanding (MoU) has been signed by the Secretariat of the Pacific Regional Environment Program (SPREP) and CSIRO, building on an existing climate partnership between the organisations. CSIRO and SPREP will continue to work together to design and deliver programs to 'support evidence-based science for risk management and broader decision-making for Pacific countries across environmental science domains'. Announcing this, CSIRO's Director of the Climate Science Centre, Dr Jaci Brown commented:

'The co-design approach developed in our work to date has produced something quite special: up-to-date climate information, projections and tools provided in formats relevant to those who need it most – those planners, decision-makers and communities already grappling with the challenges of climate change and planning for their futures...The risks associated with climate change are a reality across the Pacific region. Climate change is also exacerbating food security, biodiversity, energy systems and waste management challenges. We want to continue to build on the knowledge sharing between CSIRO scientists and Pacific islanders to tackle a broader range of issues faced across the region.'

[Sources: Joint media release: Minister for Foreign Affairs Penny Wong; Minister for Climate Change and Energy Chris Bowen, Minister for International Development and the Pacific Pat Conroy; Assistant Minister for Climate Change and Energy Jenny McAllister 8 December 2023; CSIRO media release 08/12/2023]

Australia signs Glasgow Statement, move welcomed in some quarters as a step towards the phase out of fossil fuel subsidies

Australia has joined 39 countries and institutions, including the United States, the United Kingdom, Canada and Fiji, in signing the Statement on International Public Support for the Clean Energy Transition Partnership (CETP). For context, the CETP is

The CETP (also referred to as the Glasgow Statement) was launched at COP26 in 2021 with the aim of aligning global finance commitments with the goals of the Paris Agreement.

Announcing this, Minister for Climate Change and Energy Chris Bowen [said that](#) Australia's decision to sign on to the CETP demonstrates

'Australia's ambitions to play an active role in building a net zero economy, while aligning our international investments with the goals of the Paris Agreement'.

Initial response

Responding to this announcement, the Australian Conservation Foundation (which is a member of a [coalition](#) that has been urging the government to sign the CETP) [described](#) Australia's signing as a 'positive step away from government support for fossil fuels' and urged the government to 'stop subsidising the expansion of coal and gas at

home', citing the \$50 billion in 'fossil fuel subsidies' included in this years' federal budget in illustration of the level of financial support being provided.

Separately, [Solutions for Climate Australia welcomed](#) Australia's signing as a 'great step' towards ending public investment in oil, gas and coal as has [ActionAid](#).

[Source: Joint media release: Minister for Foreign Affairs Penny Wong, Minister for Climate Change and Energy Chris Bowen, Assistant Minister for Climate Change and Energy Jenny McAllister 05/12/2023]

Facilitating investment in the net-zero transition: Key takeaways from the Treasurer's third investor roundtable

The government has released a [short update](#) on the key outcomes of the third 'Investor Roundtable' held on 5 December 2023. Many of the decisions reached centre around facilitating/encouraging investment in the net zero transition.

Key points

- **Principles to guide the development of sector-specific decarbonisation plans agreed:** Agreement was reached on a 'series of principles' to 'guide' the development of the six sector-specific decarbonisation plans currently on foot. These principles include that:
 - 'sector decarbonisation plans should be credible, clear and comprehensive, promote stability, be outcome oriented and drive practical action, be coordinated and integrated and be dynamic'.
- **Investment facilitation is set to be a 'core function' of the newly established Net Zero Economy Authority (NZEA):** Specifically the NZEA will be 'responsible for identifying and coordinating opportunities to boost private capital investment in decarbonisation and the net zero economic transformation'. The government's consultation on the investment facilitation model to be adopted by the NZEA will include engagement with roundtable participants.
- **The government plans to consult 'soon' on options to 'improve the superannuation performance test'** to ensure that 'trustees are held to account for member outcomes without holding back investment in economic priorities such as the net zero transformation and housing'. The aim is to address 'concerns that the current test may be influencing investment decisions to the detriment of member outcomes, including discouraging investment in asset classes that can strengthen the economy, such as in housing and the net zero transformation, even where it would be in the best financial interests of members'.
- **Sovereign Green Bond Framework released:** The government has released [Australia's Sovereign Green Bond Framework](#) which sets out the basis for identifying, selecting, managing, and reporting on expenditures financed with green bonds, ahead of the planned issuance of green bonds in mid-2024. Sovereign green bonds are expected to be important in facilitating investment in public projects 'crucial to the transformation to cleaner, cheaper energy'.
- **Additional \$550,000 funding for the development of the Sustainable Finance Taxonomy:** The government will invest an additional \$550,000 to partner with the Australian Sustainable Finance Institute (ASFI) to further develop Australia's first Sustainable Finance Taxonomy – an important anti-greenwashing measure. ASFI has [welcomed](#) this development and confirmed that the funding will 'help expand the coverage of the taxonomy beyond the three sectors currently under development'.
- **Steps towards enabling/facilitating investment in Australia's defence capabilities:** The government's statement flags plans for the government:
 - to 'identify and assess options to partner with private capital to invest in eligible Australian small and medium enterprises that are developing the capabilities we need'. The government envisions that expressions of interest from investors to participate in an investment fund will be sought through AusTender in 2024.
 - 'look to reform procurement processes to make it easier to do business with defence, particularly for small and medium enterprises'.
 - 'consider opportunities to invite private capital to invest in defence infrastructure and technologies' as part of its response to the Defence Strategic Review.
- **Expanding social impact investment portfolios:** The government states that 'participants signalled an ambition to grow their impact investing portfolios'. The statement flags that:
 - Westpac, Macquarie, the Munderoo Foundation and the Paul Ramsay Foundation agreed in-principle to invest alongside government in social impact initiatives that deliver outcomes for communities and tackle

disadvantage. This will include contributing to the co-design of the government's Outcomes Fund (announced in the 2023-24 Budget).

- Westpac, CBA, Macquarie, ANZ, NAB, Rest and HESTA agreed to contribute expertise to support the social enterprise sector.

- **Four new working groups agreed to be established** to 'continuously address barriers to investment in housing, the net zero transformation, defence and social impact investment'. These new working groups are planned to comprise Working 'investors, experts and industry, working closely with government'. Expressions of interest for members are planned to be released in 2024.

[Source: Joint media release: Treasurer Jim Chalmers, Minister for Climate Change and Energy Chris Bowen, Minister for Defence Industry and Minister for International Development and the Pacific Pat Conroy 05/12/2023]

MAS releases final Code of Conduct for ESG ratings and data providers

- Following consultation, the Monetary Authority of Singapore (MAS) has [released](#) a Code of Conduct for ESG Rating and Data Product Providers in final form, together with an accompanying checklist for providers to self-attest their compliance.
- MAS states that the aim of the new Code is to:
 - 'establish baseline industry standards for transparency in methodologies and data sources, governance, and management of conflicts of interest that may compromise the reliability and independence of the products. It builds upon the International Organisation of Securities Commissions' ("IOSCO") recommendations for good practices for such providers.'
- MAS 'encourages' providers to disclose their adoption of the Code and publish their completed self-attestation checklist within 12 months.
- To enable users to easily identify providers which have publicly adopted the new Code, a list will be published on the International Capital Market Association website.

[Source: MAS media release 06/12/2023]

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 passed both Houses on 7 December (with amendments) and now await Assent

[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)]

In Brief | The latest publicly available version of the COP28 draft agreement drops references to the 'phase out' or 'phase down' of fossil fuels (but negotiations are continuing)

[Source: Draft text by the President, 1 First global stocktake under the Paris Agreement - CMA agenda item 4: First global stocktake under the Paris Agreement Version 11/12/2023 16:30]

Financial Services

Top Story | Quality of Advice Review: Proposed roadmap for implementing the 'second tranche' of reforms released

The government has outlined its proposed approach to implement Tranche 2 of its response to the Quality of Advice Review Recommendations.

Key Takeouts

- In June 2023, the Australian government confirmed its acceptance (in full or in principle) of 14 of the 22 Quality of Advice Review (QAR) recommendations for the overhaul of financial advice regulation. Read: [Government response to the Quality of Advice Review - Insight - MinterEllison](#).
- **Consultation on 'first tranche' of reforms now closed:** Consultation on a draft Bill – [\[exposure draft\] Treasury Laws Amendment \(2024 Measures No. 1\) Bill 2024: Quality of Advice Tranche 1](#) – which is planned to implement the 'first tranche' of a broader legislative package of reforms – the Delivering Better Financial Advice Outcomes package – in response to the following 11 Quality of Advice Review recommendations: 7, 8, 10, 13.1, 13.2, 13.3, 13.4, 13.5, 13.7, 13.8 and 13.9 closed on 6 December 2023. Read: [Quality of Advice Review | Consultation opens on draft Bill to implement the 'first tranche' of planned reforms - POST - MinterEllison](#) and our submission on the draft Bill: [Submission in relation to the Quality of Advice Review - Insight - MinterEllison](#)
- **'Outline' of the proposed approach to the 'second tranche' of reforms:** On 7 December 2023, the government provided a final response to the Quality of Advice Review recommendations, briefly outlining its proposed roadmap for implementation of the second 'tranche' of reforms. As yet, the information is fairly high level - no draft legislation has been released for consultation or introduced into Parliament. The timing of when this will occur is also fairly vague. The government has [flagged plans](#) to consult over 'coming months' on draft legislation with a view to introducing a Bill before the end of 2024 (subject to other priorities).

On 7 December 2023, the government released its 'final response' to the [Quality of Advice Review](#) briefly outlining its proposed approach to implementing outstanding Review Recommendations 3, 4, 5, 6 and 9.

This supplements the government's [initial response to the Quality of Advice Review \(summarised\)](#), and builds on the 'first tranche' of reforms included in the draft Bill - [\[exposure draft\] Treasury Laws Amendment \(2024 Measures No. 1\) Bill 2024: Quality of Advice Tranche 1 \(summarised\)](#) – on which the government recently consulted.

Here's our summary.

Cutting red tape: Removing 'Safe Harbour' steps and replacing SOAs

In the interests of making advice more [affordable \(and therefore more accessible\)](#) the government has confirmed plans to both:

- 'Modernise the best interests duty' including removing the 'safe harbour steps' (responding to [Quality of Advice Recommendations 4 and 5](#))
- Replace Statements of Advice (SOAs) with a simpler, Plain English 'advice record' (responding to [Quality of Advice Recommendation 9](#))

A 'modernised' best interests duty

As yet, detail around what this will look like is limited.

The government's [final response](#) states that:

- *The existing primary obligation to act in the best interests of the client and to prioritise the interests of the client in the event of a conflict will remain at the core of the renewed standard.*
- *The updated standard will provide clearer legislative support for scaled or limited scope advice where this meets the client's objectives and needs, and for advice where the advice provider has limited, but relevant, information.*
- *As announced in June 2023, the existing best interests duty "safe harbour" steps will be removed.*
- *The requirement to provide appropriate advice will be retained, ensuring that all advice is appropriate to the client and fit-for-purpose for their circumstances.*

- *The existing concessional treatment for personal advice provided by banks and general insurers on defined basic products will be maintained'.*

It seems therefore that the government does not fully support the Quality of Advice Review recommendation for a 'good advice' duty. While the government seems to adopt the fit for purpose proposal to provide additional comfort about the ability to provide limited advice, it is not proposing to change the fundamental best interests duty other than to remove the safe harbour.

Replacing Statements of Advice (SOAs) with a simpler, 'principles-based advice record'.

It's proposed that the requirement to provide an SOA would be replaced with a new requirement to provide clients with a simpler 'advice record'. It's envisaged that, unlike the process-driven 'unreadable and unhelpful' SOAs, the new record of advice would be:

'clear, concise and effective and actually help the client make an informed decision about the advice they have received'.

It is worth noting that SOAs are currently required to be clear, concise and effective so it will be interesting to see how the government will achieve this for the advice record.

It's proposed that the new 'advice record' would need to 'address' the following four principles:

- 'subject matter/scope
- the advice [eg product recommendations and strategies]
- reasons for the advice [eg information about the client that the adviser considered]
- the cost of advice to the client and/or benefits received by the adviser'

These content requirements are very different to the current SOA requirements.

On the first point, Assistant Treasurer Stephen Jones has **flagged** that the government intends to

'clarify that advice can cover only one or a few topics where this meets the client's objectives and needs. And that advice can be based on relevant information without the need to complete an exhaustive fact-find in every situation'.

This presumably follows from the changes to the advice duty to facilitate scaled or limited scope advice.

The government also proposes to update existing record-keeping obligations to **'ensure** key information that informs the advice is appropriately recorded, without burdening the advice record with information that makes it harder for the client to understand and make an informed decision about the advice'.

While these goals are laudable, the challenge will be to achieve them. Perhaps a page limit should be considered?

Create a 'new class of financial advisers' to provide 'simple financial advice'

It's also proposed that a 'new class' of financial advisers - 'qualified advisers' - would be created to **'fill the** advice gap by advising on less complex matters'.

It's envisioned that this new cohort of 'qualified advisers' would:

- provide 'simple financial advice' only
- 'generally be employees of licensed financial institutions' with the licensee 'wholly responsible for the advice provided by their employees with new obligations on the licensee'
- be subject to the new 'modernised best interests duty'
- be required to meet an as yet-to-be determined 'government-mandated education standard'. On this point Mr Jones stated that:

'The exact level of education will be determined in time, but a minimum standard of a diploma may be the right balance to be less onerous than the requirements for professional advisers'.

The Assistant Treasurer has also **flagged** a potential role for 'qualified advisers' in providing 'support' to customers accessing digital advice which would in turn, enable institutions including superannuation funds, to embed emerging digital advice technologies into their advice services.

The challenge of course will be to determine what is 'simple advice'. It will be interesting to see if the government takes a prescriptive or principles-based approach to this and what the role will be for ASIC to provide clarity and certainty in this area.

These proposed changes would implement the government's response to Quality of Advice Review Recommendation 3.

Superannuation-specific changes

In light of the 'unique obligations on superannuation funds and the need to drive engagement with members' the government also proposes to both:

1. Clarify the topics on which superannuation funds can charge for advice: The government proposes to 'legislate' a 'broad' list of advice topics on which it is appropriate for members' superannuation to be charged – it's proposed that the same list of advice topics will apply to collectively charged advice, and advice that is charged direct to the individual member's superannuation account.

This list is [proposed](#) to include:

- investment decisions eg 'the appropriate investment options within a fund and contributions strategies'
- delivering retirement income eg 'retirement projections, a drawdown strategy and recommendations about retirement products'.

It's also proposed that funds will be able to consider broader circumstances for both the member and their household including 'their debt and assets, their partner's situation, and eligibility for the Age Pension and other government support'.

The proposal to allow consideration of broader circumstances is welcome. Hopefully when the list is released, it will address the difficulty currently faced by superannuation trustees in determining when advice can be paid for from the fund. As we have suggested in our submission on the draft Bill [read: Submission in relation to the Quality of Advice Review - Insight - MinterEllison] to implement the 'first tranche' of the advice reforms, rather than focusing on the topic of advice which creates artificial distinctions between superannuation and non-superannuation advice, we think it would be better and far simpler to administer, to impose a limit on the amount that can be charged to a member's account for advice, e.g. a dollar or a percentage limit per year.

2. Create a 'specific permission within the current general advice framework to allow superannuation funds to prompt or "nudge" members' to enable funds to be [proactive](#) and encourage members to think about their financial situation. And to seek advice at important decision-points that they might otherwise have missed' (eg prompting members approaching retirement to consider options for how they may wish to drawdown on their super). It's envisioned that as a result of the proposed reform:

'millions of members will receive helpful messages with relevant and timely information...Which could lead to millions of members seeking and receiving advice that, today, they do not receive'.

We hope that in implementing this (proposed) reform the government modifies the anti-hawking laws to allow trustees to reach out to their members in the accumulation stage to inform them about retirement income products offered by the fund.

This proposed change would implement the government's response to Quality of Advice Review Recommendation 6.

Outlook and timing

As yet, detail around the proposed reforms is limited - no draft legislation has been released for consultation, or introduced into Parliament.

In terms of timing, the government has signalled [plans to consult](#) 'over the coming months on the design of the draft legislation' to implement its proposed reforms with a view to having a final Bill introduced into Parliament 'before the end of 2024, pending other government priorities'.

[Sources: Final Government Response to the Quality of Advice Review; Assistant Treasurer and Minister for Financial Services Stephen Jones speech at Parliament House 07/12/2023; Government media release 07/12/2023]

Top Story | Submission in relation to the Quality of Advice Review

MinterEllison has released its submission on draft legislation proposing to implement 'Tranche 1' of the government's response to the Quality of Advice Review. Overall, it's submitted that the proposed changes do not go far enough in a number of respects.

You find the full text of the submission here: [Submission in relation to the Quality of Advice Review - Insight - MinterEllison](#)

Payment system reform | Second round of consultation on a proposed licensing framework for payment service providers

The government has opened a [second round of consultation](#) on a proposed licensing framework for payment service providers (PSPs) ahead of the planned introduction of legislation to enact a payments licensing regime 'in 2024'.

For context, in [June 2023](#) the government consulted on a list of payment functions proposed to be licensed (see: [Governance News 7 June 2023 at p29](#)).

This second round of consultation seeks feedback on:

- **An updated list of payment functions:** The consultation paper highlights the following changes to the list of payment functions proposed for inclusion (as compared with the first consultation paper):
 - The 'Payment Facilitation, Authentication, Authorisation, and Processing Services' function has been split into two distinct functions: (i) 'Payment Facilitation Services'; and (ii) 'Payment Technology and Enablement Services'.
 - The 'Payments Clearing and Settlement Services' function has been removed.
 - The 'Money Transfer Services' function has been replaced with a 'Cross-border Transfer Services' function, to provide clarity and clearer delineations between functions.
 - Additional clarity has been provided on all functions, including on the interactions between functions.A full list of payment functions proposed for inclusion is included in [Table 3](#) at p9 of the Consultation paper.
- **Other proposals:** In addition, the consultation paper seeks views on proposed:
 - 'regulatory requirements to facilitate greater access to payment systems'
 - 'graduated regulatory requirements for stored-value facilities including payment stablecoins'
 - 'a framework for industry standard-setting'
 - 'a new rule-making power to enable the introduction of a mandatory revised ePayments code to provide enhanced consumer protections'.

Timing: The due date for submissions is **02 February 2024**. As flagged above, the government envisions that legislation to enact the reforms [will be introduced in 2024](#).

[Sources: Treasury Consultation: Payments System Modernisation (Regulation of Payment Service Providers) 9 December 2023 to 2 February 2024; Joint press release: Treasurer Jim Chalmers and Assistant Treasurer and Minister for Financial Services Stephen Jones 08/12/2023]

Payment system reform | 'Winding down' Australia's cheque system

The government is seeking feedback on 'the opportunities and challenges in transitioning away from the cheques system' ahead of the [planned phase out](#) of cheques by 2030 (and the planned phase out of government use by the end of 2028).

Among other things, the consultation paper proposes a timeline for the planned phase out of cheques starting in 2025 with banks ceasing to issue bank cheques (see: [Figure 1 p6 of the Consultation Paper](#))

The consultation paper seeks feedback on the following six questions:

- 'Are the conditions to enable a smooth transition, as outlined above, appropriate? Are there any other principles not outlined above that should be prioritised in the transition?
- Is the sequencing of the transition appropriate? Is there an alternate manner of transition that would better enable a smooth transition? If so, please explain.
- Is the timing of the sequencing appropriate? Is there an alternate timing of the sequencing that would better enable a smooth transition? If so, please explain.
- What are the roles of government and industry in ensuring a smooth transition?
- What are the barriers banks and other participants face in ensuring their customers have a smooth transition away from cheque use?
- Will the system and its users be ready to transition earlier than the intended end-date of 2030, noting the principles outlined above?'

Timing: The due date for submissions is **2 February 2024**.

[Sources: Treasury Consultation: Winding down Australia's cheques system 08 December 2023 to 02 February 2024; Joint press release: Treasurer Jim Chalmers and Assistant Treasurer and Minister for Financial Services Stephen Jones 08/12/2023]

CPS 234 compliance | APRA imposes additional licence conditions on super fund over 'significant deficiencies' in cyber controls

- The Australian Prudential Regulation Authority has [announced](#) that it has imposed additional licence conditions on the trustee of a superannuation fund after two reviews identified 'deficiencies' in the funds' compliance with APRA Prudential Standard CPS 234 (Information Security) and following a cyber incident that occasioned 'significant' data loss.
- The additional licence conditions require the trustee to engage a third part to both:
 - 'provide assurance regarding...[the funds'] remediation activities and to address the recommendations contained in the internal audit and tripartite review reports; and
 - conduct an operational effectiveness review of the CPS 234 controls and frameworks in place for [the fund]'
- APRA also requires attestation from the 'Chair that the remediation actions are complete and effective, and that the entity is compliant with CPS 234' on completion of the operational effectiveness review.

[Source: APRA media release 08/12/2023]

ASIC calls on online trading providers to address the concerns flagged in new report (REP 778)

The Australian Securities and Investments Commission (ASIC) has [released](#) a new report - [ASIC REP 778 Review of online trading providers \(REP 778\)](#) - summarising the findings of its 2022–23 review into online trading providers, highlighting the regulatory interventions (eg court actions, stop orders and infringement notices) taken to 'protect retail investors from high-risk offers and business practices' and 'clarify[ing]' its regulatory expectations.

For context, 'online trading providers' refers to:

'[emerging](#) fintech companies who operate as an authorised representative of an Australian financial services (AFS) licensee, CFD issuers, large stockbrokers and other AFS licensees'.



ASIC has 'encouraged' online trading providers to 'assess their own arrangements and consider how the observations and areas for improvement outlined in the report apply to their business' noting that ASIC's focus on the issues identified in the report is continuing.

Announcing the release of REP 778 ASIC Commissioner Simone Constant [said](#):

'Licensed online trading providers are required to meet important licensee obligations as gatekeepers for offers of investment products and services to retail clients. Where we identify significant harm, we will continue to take strong regulatory action including, where appropriate, commencing court proceedings'.

[Sources: ASIC media release 06/12/2023; ASIC REP 778 Review of online trading providers (REP 778)]

APRA moves to tighten interest rate risk requirements – opens consultations on further revisions to the framework on interest rate risk in the banking book

Following consultation, on 12 December 2023 APRA released revisions to Prudential Standard APS 117 Interest Rate Risk in the Banking book (IRRBB) aimed at improving banks' management of the impact of interest rate changes on their financial position.

APRA also opened a consultation on: proposed further changes to certain aspects of APS 117, a proposed prudential practice guide (APG 117) and reporting standards ARS 117.0 and ARS 117.1.

Announcing this, APRA Member Therese McCarthy Hockey [said](#) the proposals are 'among a range of measures APRA is taking in response to the global banking turmoil earlier this year'.

Ms McCarthy Hockey [commented](#) that:

'A failure to manage interest rate risk was one of the primary factors behind the collapse of several US banks this year. We also saw how the failure of one bank, even if not considered especially important systemically, can create a contagion effect that threatens other institutions within a country and across the world. Australia is the only country in the world that mandates provisions for interest rate risk as a core capital requirement. The new and proposed changes incorporate lessons learned from the recent large interest rate movements and overseas bank failures and will further strengthen the resilience of the banking system to potential instability'.

Indicative timing

The due date for submissions is 1 March 2024.

APRA intends to finalise APS 117 'by the middle of' 2024 with APS 117 [planned to](#) apply from 1 October 2025.

[Sources: APRA media release 12/12/2023; Revisions to the capital framework for authorised deposit-taking institutions 12/12/2023]

Risk Management

Top Story | Transforming workplace responses to prevent sexual harassment

A recent [Champions of Change Coalition report](#) has been released offering practical insights into the steps organisations can take to develop more person-centred, trauma-informed, safe and fair approaches when responding to workplace sexual harassment and related unlawful behaviours.

You can find our key takeaways here: [Transforming workplace responses to prevent sexual harassment - Insight - MinterEllison](#)

See also: [Respect@Work: Positive duty guidance launched - Technical update - MinterEllison](#)

In Brief | New AICD/ACSI report offers practical guidance for directors to assist them in meeting their obligations under the new 'positive duty' to prevent and respond to workplace sexual harassment, including suggested targeted questions to ask their management teams to help 'ensure they have active oversight of measures to address workplace sexual harassment and other positive duty conduct'



[Sources: Positive duty: preventing and responding to workplace sexual harassment – Insights from Australian directors]

In Brief | The WGEA has released new guidance for employers around collecting, analysing and reporting information on the prevalence of sexual harassment in their workplace

[Source: WGEA guidance: Using evidence to improve workplace sexual harassment prevention and response: Guidance for employers December 2023]

Other News

Bill to implement the government's response to the RBA Review introduced, referred to Committee

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 Independent Review of the Reserve Bank (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 and outlook

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'.

Parliament has now risen for 2023 and is not due to [resume until February 2024](#).

The Bill has been referred to the Senate Economics Legislation Committee for report by [21 March 2024](#).

[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]

Replacement of the AAT with new Administrative Review Tribunal: Bills introduced

Two new Bills - [Administrative Review Tribunal Bill 2023 \(Cth\)](#) and [Administrative Review Tribunal \(Consequential and Transitional Provisions No. 1\) Bill 2023 \(Cth\)](#) – were introduced into the House of Representatives on 7 December 2023.

Broadly, the Bills would abolish the existing Administrative Appeals Tribunal and replace it with a new Administrative Review Tribunal.

The primary Bill - [Administrative Review Tribunal Bill 2023 \(Cth\)](#) - would establish a new Administrative Review Tribunal and the Administrative Review Council.

The [Administrative Review Tribunal \(Consequential and Transitional Provisions No.1\) \(Consequential and Transitional Bill\) 2023 \(Cth\)](#) would abolish the AAT and make consequential amendments to 138 Commonwealth Acts, and transition AAT staff, operations, and matters across to the new tribunal.

In his [second reading speech](#), Attorney General Mark Dreyfus flagged the government's intention to introduce a third Bill early in 2024, which is planned to include further 'minor and technical updates to a range of Commonwealth Acts, which collectively represent approximately seven per cent of the AAT's caseload, and will include amendments requiring consultation with states and territories'.

Proposed timing: The Primary Bill would commence on a day to be fixed by Proclamation. Or, if the provisions do not commence within 12 months of Assent being given, on the first day of the first calendar month to start after the end of 12 months after Assent.

[Source: [Administrative Review Tribunal Bill 2023 \(Cth\)](#), [Administrative Review Tribunal \(Consequential and Transitional Provisions No. 1\) Bill 2023 \(Cth\)](#)]

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