



Governance News

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

12 July 2023

Contents

Remuneration	4
US CEOs are paid more than their UK counterparts and the gap is widening according to analysis from ISS.....	4
Diversity	5
UK Pensions Scheme Regulator launches DEI survey	5
In Brief New report monitoring progress against ten facets of diversity - Ethnicity, Gender, Age, Nationality, Mental Health, Sexual Orientation, Socio-economic Status, Disability, Religion, and Parenthood – at some of the UK's largest companies flags they have sharpened their focus on DEI, but the level of focus varies significantly across the different facets.....	5
ESG	6
Top Story Will heightened greenwashing regulatory intervention increase class action risk?	6
Event Mandatory Climate Reporting Standards – What directors need to know	6
Greenwashing ASIC again underlines its continued focus on greenwashing, urges companies to prepare now for the introduction of ISSB-aligned reporting.....	6
Singapore: Consultation launched on the proposed approach to implementation of ISSB-aligned, mandatory climate disclosure requirements.....	7
ISSB to take over from the TCFD	8
NZIA dumps emissions disclosure obligation	8
Mandatory climate reporting NZ regulator consults on proposal to temporarily exempt certain climate reporting entities from the requirement to include a link to their climate statements in their annual report	8
Canada CSA to consult on the introduction of ISSB-aligned standards in 'coming months'	9
Consultation has opened on a voluntary Code of Conduct for ESG data and rating providers in the UK (ahead of the possible introduction of mandatory rules)	9
Hoping to drive a 'step change' in responsible investing: ShareAction calls on institutional investors to adopt its new definition of 'responsible investment'	9
Report confirms Australia's fugitive methane emissions are likely to have been 'grossly underestimated' to date, Independent Member Zali Steggall reiterates calls to tighten reporting requirements	10
Greenwashing inquiry ACCC submission flags imminent release of updated guidance, limitations of existing regulatory settings	10
In Brief TNFD Recommendations set to launch 18 September 2023 together with updated and additional guidance for financial institutions, nonfinancial sectors and biomes	12
In Brief Ahead of the introduction of mandatory, ISSB-aligned sustainability requirements in Australia, CA ANZ and Deloitte have released a series of guides to assist financial professionals and finance teams to prepare	12
In Brief Professor Pamela Hanrahan has cautioned that in light of 'the regulators' increased focus on greenwashing in forward-looking ESG statements, companies and boards...need to pay even closer attention to whether these statements about the future have a clear and documented reasonable foundation before they are made'	12
In Brief New report flags that 'many climate-scenario models' used by the financial services sector are 'significantly underestimating climate risk' in that they 'exclude many of the most severe impacts we can expect from climate change' eg tipping points and second order impacts	12
In Brief The role of Chairs (and boards) can play in building and enhancing trust through the sustainability transition – new guide released.....	12
In Brief Australia has joined the G7 backed 'Climate Club' - a 'global initiative launched in December 2022 to accelerate the implementation of the Paris Agreement'	12

Financial Services	13
Legislation to establish the long-awaited CSLR has received Assent.....	13
New CSLR Regulations registered	14
UK Regulator wants to see banks make faster progress on improving rates for savers	14
Consultation: Proposed changes to tax laws aimed at reducing compliance costs for general insurers.....	15
In Brief Assistant Treasurer Stephen Jones has said the government plans to consult on what form strengthened obligations on lenders to protect consumers from online scams should take before the end of 2023 with a view to having new requirements in place in 2024	15
In Brief The CEOs of Australia's four major banks are set to appear before the House Standing Committee on Economics on 12 and 13 July. Banks' efforts to protect customers from online scams is planned to be one area of focus.....	15
In Brief US Federal Reserve Board Vice Chair has given a speech emphasising the 'fundamental' role capital plays in ensuring the ongoing stability of the financial system and outlining proposals to strengthen capital standards for larger banks. Implementation of the proposed reforms (which are still subject to consultation) is expected to take 'several years'.....	15
In Brief US regulators order bank to pay \$250m in fines and compensation to customers over 'junk fees, withholding credit card rewards, and opening fake accounts'	15
Accounting and Audit	16
FRC considers continued supervision of the big audit firms remains necessary following the latest round quality inspections	16
Insolvency and Reconstruction	17
ASIC imposes five year ban on director over their involvement in phoenix activity	17
In Brief The AASB-AUASB have reissued their joint publication Going Concern and Related Assessments which outlines director and management responsibilities in assessing solvency and going concern and how this impacts on the preparation of financial statements and auditor responsibilities.....	17
Risk Management	18
Stronger protections for telco customers in financial hardship: New enforceable industry standard to be rolled out, existing Code to be strengthened.....	18
Parliamentary Inquiry into Australia's Human Rights Framework: Time to introduce an Australian Charter of Human Rights?	19
In Brief As part of its five year inquiry into markets for the supply of digital platform services in Australia and their impacts on competition/consumers, the ACCC has released an issues paper seeking feedback about data broker services in Australia. The due date for submissions is 7 August 2023	19
Misconduct and Liability	20
In Brief Markets Disciplinary Panel has handed down a \$4.5m penalty to one of Australia's largest retail broking businesses over (admitted) breaches of market integrity rules. Announcing this, ASIC said that the outcome 'sends a clear message to market participants that breaches of market integrity rules will result in substantial penalties that should not be seen as a cost of doing business'.....	20
In Brief Commonwealth penalty unit increase: The value of the Commonwealth penalty unit increased from \$275 to \$313 effective from 1 July 2023. The Commonwealth penalty unit is automatically adjusted in line with the Consumer Price Index (CPI) every three years from 1 July 2023.	20
Other News	20
Top Story FIRB Update: Important changes to the foreign investment regime in Australia	20
Top Story MinterEllison's Guide to the National Anti-Corruption Commission	20

Remuneration

US CEOs are paid more than their UK counterparts and the gap is widening according to analysis from ISS

[Analysis](#) from Institutional Shareholder Services (ISS) confirms US CEOs are paid more than their UK counterparts, with the gap widening over the past five years.

According to ISS' comparative analysis of CEO pay at S&P 500 and FTSE 100 companies over the 2019-2023 period:

- S&P 500 median CEO pay increased 23% over the period (vs only 1.1% for FTSE 100 CEOs)
- ISS attributes the widening gap between US and UK CEO pay chiefly to steep increases in the Long term Incentive (LTI) component of S&P 500 CEO pay. According to ISS, LTI pay for US CEOs increased 34% over the period. In contrast the, LTI pay for UK CEOs went backwards by 3%.
- ISS also found that though investor support for executive pay is trending (slightly) down in both the US and the UK, a comparison of median vote support for 'say on pay' proposals in the two countries suggests that 'investors 'have a greater threshold for higher overall pay in the US' than in the UK – median vote support fell by 1.8% in the UK vs 1.7% in the US between filing years 2019 and 2023.

Broader context

- This follows [recent comments](#) by London Stock Exchange CEO Julia Hoggett calling for consideration to be given to increasing CEO pay (to align with US pay) to help ensure UK companies are able to attract and retain top talent – a view that has sparked debate. The High Pay Centre has issued a [statement](#) submitting there is no justification for raising CEO pay, especially given the current cost of living crisis.
- [Research](#) from Insightia suggests that executive pay in the UK has reached record levels – according to the report, in 2022 total pay for CEOs of FTSE 350 companies averaged £3.03m (up from £2.6m in 2021). Insightia also found that the approval rate for 'say on pay' proposals during Q1 2023 has fallen from an average of 93.5% in 2020/21 to 92.5%.
- Looking at vote results so far this year, there are signs that the issue is a particular concern for investors. For example, the 'pay revolt' at Unilever saw [58% of shareholders](#) vote down the company's remuneration report.

[Sources: ISS media release 05/07/32023; Full text analysis]



Diversity

UK Pensions Scheme Regulator launches DEI survey

- The UK Pensions Regulator (TPR) has [issued a call](#) to all 97,000 occupational pension scheme trustees and public service pension scheme board members, to take part in an anonymous online survey aiming at building a 'clearer picture' of the current state of DEI in this context.
- This is considered necessary as reported DEI data is relatively scant – only 17% of schemes recorded any diversity data about their trustees last year, and in most cases the data collected was confined to age, sex, ethnicity and in some cases information about disability and education. Information about religious belief, gender identity or sexual orientation was captured by very few schemes.
- To address this gap, the survey will gather data on:
 - trustees' DEI characteristics (eg the proportion of trustees with protected characteristics, their academic and socio-economic backgrounds and work experience)
 - trustees' views on DEI and their level of awareness of TPR's DEI action plan
 - the DEI actions being undertaken by schemes/whether information on the benefits for savers is being captured.
- The data is planned to be used to highlight gaps and track progress going forward. TPR expects to release results from the survey before the end of 2023.

[Source: The TPR media release 05/07/2023]



In Brief | New report monitoring progress against ten facets of diversity - Ethnicity, Gender, Age, Nationality, Mental Health, Sexual Orientation, Socio-economic Status, Disability, Religion, and Parenthood – at some of the UK's largest companies flags they have sharpened their focus on DEI, but the level of focus varies significantly across the different facets

[Source: DIAL Global Diversity Review 2023: UK]

ESG

Top Story | Will heightened greenwashing regulatory intervention increase class action risk?

In light of the growing global focus on sustainability, businesses operating in Australia face increased scrutiny on their environmental, social, and governance practices. This has the potential to increase class action risk for those businesses.

MinterEllison has released an article reflecting on this and offering practical insights into the steps boards can take to avoid greenwashing allegations and maintain stakeholder expectations. You can find the full text here: [Will heightened greenwashing regulatory intervention increase class action risk? - Insight - MinterEllison](#)

Event | Mandatory Climate Reporting Standards – What directors need to know

Free webinar - implementation of mandatory climate reporting in Australia

Mandatory climate reporting will represent the biggest shift in Australian corporate reporting in a generation and is likely to take effect from July 2024.

The AICD is hosting a free webinar breaking down what directors need to know about the release of the International Sustainability Board's (ISSB's) first two sustainability standards and the proposed approach to implementation of mandatory climate-reporting standards in Australia, as well as talking through the steps they can take to prepare/support high quality climate reporting.

The panellists for the sessions are:

- Claire LaBouchardiere, ASIC Senior Executive Leader, Companies and Small Business
- Karen McWilliams GAICD, Business Reform Leader, Chartered Accountants Australia and New Zealand
- Warren Tease, Chief Adviser, Treasury
- Christian Gergis GAICD, Head of Policy, AICD

Registration details

The webinar will be held on Wednesday 26 July 2023 at 12-1pm. You can register to attend [here](#).

Greenwashing | ASIC again underlines its continued focus on greenwashing, urges companies to prepare now for the introduction of ISSB-aligned reporting

In a [short article](#), Australian Securities and Investments Commission Deputy Chair Karen Chester has again underlined ASIC's continued focus on tackling greenwashing. Ms Chester urged firms to review the [ASIC REP 763 \(summarised\)](#) which highlights examples of the circumstances where ASIC has intervened in this context, emphasising that ASIC plans to '

'continue our targeted surveillance activity, progress ongoing investigations and anticipate further enforcement action'.

Ms Chester also underlined the need for firms to prepare now for the introduction of mandatory ISSB-aligned disclosure requirements. Ms Chester commented:

'To ensure your company is well placed to transition to future climate-related disclosure standards, you should be considering the potential implications of the new ISSB standards for your future disclosure requirements, especially for listed entities, large financial institutions and super funds. An immediate imperative is for companies to be moving now to embed the right processes, practices and governance ahead of the future reporting requirements under ISSB'.

[Note: For context, the International Sustainability Standards Board [recently released](#) the first two of what are planned to be a suite of global sustainability standards. These standards are expected to form the core of mandatory disclosure requirements in Australia (and various other jurisdictions). You can read more about the release of the first two ISSB standards [here](#). Separately, the Australian government is currently conducting a [second round of consultation](#) on its proposed approach to implementing ISSB-aligned climate disclosure standards. You can read our key takeaways on the consultation [here](#).]

Singapore: Consultation launched on the proposed approach to implementation of ISSB-aligned, mandatory climate disclosure requirements

Following the release of the [ISSB's initial two global sustainability standards](#), the Accounting and Corporate Regulatory Authority (ACRA) and Singapore Exchange Regulation (SGX RegCo) are [seeking feedback](#) on their proposed roadmap for implementation of ISSB-aligned, mandatory climate reporting requirements in Singapore.

What organisations would need to report

It's proposed that

- Both listed issuers and large non-listed companies would be required to report under local, ISSB-aligned, climate disclosure standards.
- Reporting on certain 'complex' aspects of the new standards (eg Scope 3 emissions disclosure) would not be mandatory initially, but would be introduced after the first year/two years of the new requirements being introduced.

Which organisations would need to report when

It's proposed that:

- all listed issuers including those incorporated overseas, business trusts and real estate investment trusts, would need to report against ISSB-aligned climate disclosure requirements from **FY 2025**
- large nonlisted companies (annual revenue of at least \$1 billion) would follow suit in **FY 2027**.

It's proposed that a review would be conducted in 2027 with a view to mandating climate reporting to other large non-listed companies (revenue of at least \$100 million) by 'around FY2030'.

Climate disclosure would be part of the annual financial reporting cycle

It's proposed that climate disclosure under the new standards would have the same reporting/filing timelines as financial statements to shareholders/stakeholders.

Board oversight

It's also proposed that:

'Legal responsibilities should also be imposed on the company, its directors, and/or officers to ensure accountability for CRDs [climate related disclosures]'.

External assurance

It's proposed that:

- listed issuers would need to obtain external assurance on Scope 1 and Scope 2 emissions from **FY 2027**
- large non-listed companies would need to do so from **FY 2029**

It's proposed that the assurance could be provided by ACRA-registered audit firms and Testing, Inspection, Certification firms accredited by the Singapore Accreditation Council.

Next steps

- The due date for submissions is 30 September 2023.
- ARCA and SGX RegCo plan to finalise their recommendations around implementation by the end of 2024.
- SGX RegCo plans to conduct a separate consultation on any sustainability-related amendments to the Listing Rules by the end of 2023.

[Source: SGX consultation: Consultation Paper on the Recommendations by the Sustainability Reporting Advisory Committee 06/07/2023 – 30/09/2023]

ISSB to take over from the TCFD

- The IFRS International Sustainability Standards Board (ISSB) is set to take over responsibility for monitoring companies' progress on climate related disclosures from the Financial Stability Board Task Force on Climate-related Financial Disclosures (TCFD), following the publication of the initial two ISSB sustainability standards (IFRS S1 and IFRS S2).
- The ISSB's standards fully incorporate and build on, the TCFD recommendations. As such, the FSB and the ISSB consider it appropriate that responsibility for monitoring progress be transferred to the ISSB.

[Source: IFRS media release 10/07/2023]

NZIA dumps emissions disclosure obligation

Two years after the launch of the UN Environment Program (UNEP) backed Net Zero Insurance Alliance (NZIA, the initiative has released a [statement](#) announcing that going forward, NZIA members 'have no obligation to set or publish [emissions reduction] targets' for their insurance and reinsurance underwriting portfolios in line with a net-zero transition pathway.

The statement also underlines that:

'Each company who chooses to be a member of the NZIA unilaterally and independently decides on the steps on its path towards net zero. NZIA membership does not involve any coordinated competitive conduct or exchanges of competitively sensitive information. Rather, the NZIA provides a range of methodology options to support individual NZIA members' progress towards their own net-zero commitments'.

According to the announcement, the dumping of any expectation that members disclose their emissions reduction targets does not reflect any lessening in members' commitment to the energy transition.

Future of the NZIA in doubt?

The statement appears to cast doubt on the future of the initiative. According to the statement:

'UNEP is fully committed to strengthening and deepening its collaborative work with the insurance industry and key stakeholders to advance net-zero insurance thinking and practices globally in order to speed and scale up the transition to a net-zero economy. NZIA members remain committed to the net-zero transition and are engaging with a broader community of stakeholders on the future evolution of the NZIA'.

The statement makes no reference to, but does follow, the [recent exodus of a number of NZIA members](#) or to anti-trust accusations [levelled at the initiative](#) by some Republican Attorneys-General.

Responding to the NZIA's statement, Insure our Future [comments that](#) jettisoning target disclosure requirements for NZIA members undermines the purpose of the initiative, reducing it to an 'empty shell' that 'opens the door for further net zero greenwashing by the insurance industry'. Following what it considers the 'collapse' of the NZIA, Insure our Future has called on regulators to mandate disclosure of emissions reduction targets for insured emissions.

[Source: UNEP NZIA media release 05/07/2023]

Mandatory climate reporting | NZ regulator consults on proposal to temporarily exempt certain climate reporting entities from the requirement to include a link to their climate statements in their annual report

- The New Zealand Financial Markets Authority (FMA) is [seeking feedback](#) on a proposal to temporarily exempt Climate Reporting Entity (CRE) listed issuers – ie large listed issuers of quoted equity securities or quoted debt securities (over \$60 million in market capitalisation or quoted debt, respectively) - from the requirement under New Zealand's mandatory climate reporting regime, to include a link to their climate statements in their annual reports. That is, under the proposal, listed issuer CREs could lodge their climate statements within four months after their balance date rather than having to include their climate statements with their annual report (which is due three months after their balance date).
- The relief is being considered because as flagged, in practice CRE listed issuers will have three months to lodge their climate statements rather than the intended four. This is acknowledged by the FMA to be 'challenging', especially during the initial years of the new climate reporting regime.

- It's proposed that the relief would be available for two years and would be limited to CRE listed issuers only, though the consultation paper seeks feedback on whether the relief should be extended to also include registered bank CREs.
- The due date for submissions is 7 August 2023. The FMA has indicated that if any exemptions are granted, it will 'work to get them in place as soon as possible'.

[Source: Consultation: Climate-related disclosures timing challenge 10/07/2023]

Canada | CSA to consult on the introduction of ISSB-aligned standards in 'coming months'

- The Canadian Securities Administrators (CSA) has [formally welcomed](#) the release of the first two global sustainability standards by the International Sustainability Standards Board (ISSB): IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures.
- The CSA has confirmed plans to consult on the introduction of ISSB-aligned requirements in 'coming months'.

[Source: CSA media release 05/07/2023]

Consultation has opened on a voluntary Code of Conduct for ESG data and rating providers in the UK (ahead of the possible introduction of mandatory rules)

- In 2022, the UK Financial Conduct Authority (FCA) appointed the International Capital Market Association and the International Regulatory Strategy Group to convene an industry group to develop a voluntary Code of Conduct (Code) for ESG data and rating providers, ahead of the potential introduction of (mandatory) legislated requirements. (You can find the details of the HMT consultation which ran from 30 March – 30 June 2023 [here](#)).
- A [draft principles-based Code](#) has now been released for consultation reflecting [IOSCO's recommendations](#). The Code would set minimum expectations around governance, management of conflicts of interests, quality assurance processes (to ensure high quality ratings) and transparency around the methodologies used.
- The Code is intended to have broad application/relevance for entities 'whose activities involve the provision of ESG data products and/or ESG ratings/scores'.
- Consultation is set to run until 5 October 2023, ahead of the planned launch of the Code in final form at the end of 2023.
- The FCA has [welcomed the release](#) of the draft Code for consultation, suggesting that once finalised the new Code will
 - 'play an important role in raising standards in the short-term, as well as continuing to apply to any firms that fall out of the scope of potential future regulation'.
- Separately, the EU is also progressing proposals to regulate ESG rating providers. The European Commission's [draft regulation](#) is here.

[Sources: International Regulatory Strategy Group Consultation on Draft Code of Conduct for Environmental, Social and Governance ("ESG") Ratings and Data Product Providers 05/07/2023; Draft Code; FCA media release 05/07/2023]

Hoping to drive a 'step change' in responsible investing: ShareAction calls on institutional investors to adopt its new definition of 'responsible investment'

- ShareAction has [launched its own](#), new definition of 'responsible investment' in a bid to 'raise standards across the financial sector and help prevent greenwashing and misleading claims'. ShareAction's definition is:
 - 'Responsible Investment is a transparent approach, embedded throughout the investment process, that takes the negative and positive impacts on people and planet as seriously as financial risk and return.'
- Breaking this down, the definition is based on the following four principles/expectations:
 - Transparency around the actual and expected environmental impacts of portfolio companies and how these impacts are factored into investment decisions and stewardship of investee companies
 - Embedding responsible investment decision making – decision making that 'balances risk, return and impact – consistently across the organisation and across all asset classes, strategies and offered funds

- Taking responsibility for the negative and positive impacts - 'stewardship of assets should mitigate harms and encourage positive outcomes for all companies' stakeholders, across social and environmental issues'.
- Accord the same weight to 'real world impacts' as financial risk/return (informed by credible global frameworks such as the Sustainable Development Goals).
- ShareAction CEO Catherine Howarth commented:
 'A step change in responsible investment ambition is needed if we're to halt climate breakdown, prevent the destruction of nature, and ensure decent health and living standards for people around the world...In launching this new definition of responsible investment, we're demanding the investment industry balance risk, return and impact to better serve the interests of its ultimate clients.'

Series of guidance documents/manuals planned

- ShareAction plans to release a series of guidance documents to support uptake of the new definition and 'set out standards and expectations for responsible investment practices by asset managers across specific topics'.
- The first of these guides is titled '[How asset managers can set interim net zero targets that are fit for purpose](#)'. The guide 'addresses how asset managers can set robust emissions goals to influence companies in their portfolios to decarbonise at the pace and scale required to limit global temperature rise to 1.5C'. It sets out the following five expectations for asset managers. That asset managers:
 - 'advocate for a common approach to emissions reporting and interim target setting'
 - 'enhance transparency about assets not currently included within targets and progress for bringing them into scope'
 - 'use a reduction in absolute, real-world emissions as the primary metric to report and set targets'
 - 'place real-world impact at the heart of net zero targets and evidence this by disclosing portfolio companies' ie ShareAction would like to asset managers 'drive deep decarbonisation from their portfolio companies' rather than just avoid high carbon sectors
 - apply 'greater ambition for companies operating in the Global North' given that 'companies operating in the Global South are expected to decarbonise more slowly, as they contend with lower access to capital and higher underlying demand growth'.

[Sources: ShareAction media release 04/07/2023; 11/07/2023]

Report confirms Australia's fugitive methane emissions are likely to have been 'grossly underestimated' to date, Independent Member Zali Steggall reiterates calls to tighten reporting requirements

[Analysis](#) from the Institute for Energy Economics and Financial Analysis (IEEFA) suggests that global fugitive methane emissions from coal mining and oil and gas supply are 'likely' to have underestimated to date by approximately 80% for coal and 90% for oil and gas. This is also the case in [Australia](#).

According to IEEFA's analysis, correcting this under-reporting means that large industrial facilities will need to double their rate of decarbonisation and halve their emissions by the end of the decade.

Citing this report, Independent Member Zali Steggall has [reiterated](#) her [previous calls](#) for the [review](#) of the National Greenhouse and Energy Reporting Act 2007 (Cth) (NGER Review) to address accurate reporting, monitoring and measurement of methane emissions 'as a matter of urgency'. Specifically, Ms Steggall has [called for](#) existing reporting requirements to be strengthened to:

- set clear standards for measurement accuracy and reporting
- allow for the use of bottom-up and top-down measurement methods
- require all fossil fuel companies to measure their methane emissions

[Sources: Zali Steggall media release 06/07/2023; Zali Steggall submission to Climate Change Authority consultation: Setting, tracking and achieving Australia's emissions reduction targets]

Greenwashing inquiry | ACCC submission flags imminent release of updated guidance, limitations of existing regulatory settings

- The Senate Committee on Environment and Communications is currently [conducting an inquiry](#) into greenwashing with particular reference to:

- 'the environmental and sustainability claims made by companies in industries including energy, vehicles, household products and appliances, food and drink packaging, cosmetics, clothing and footwear;
- the impact of misleading environmental and sustainability claims on consumers;
- domestic and international examples of regulating companies' environmental and sustainability claims;
- advertising standards in relation to environmental and sustainability claims;
- legislative options to protect consumers from green washing in Australia; and
- any other related matters'.

Key takeaways from the ACCC's submission

Limitations of existing laws

- The Australian Competition and Consumer Commission's (ACCC) [submission](#) identifies a number of 'limitations in what can be achieved through the prohibitions in the Australian Consumer Law [ACL] on misleading claims' in this context, notably that:

'The ACL cannot require a business to make an environmental claim nor require a claim to be made in a prescribed format, such as energy rating, water rating and country of origin labels, to enable consumers to easily make comparisons between competing products'.

- The submission does not put forward specific proposals/recommendations to address this issue.

Updated guidance planned to be released for consultation

- The submission underlines the ACCC's role in supporting/encouraging compliance with existing laws (as well as enforcement). On this point, the regulator acknowledges the need for additional guidance and flagged plans to release an update to its 2011 green claims guidance 'shortly'. The draft guidance will be informed by the outcomes/issues identified in the regulator's [2022 'internet sweep'](#) of green claims.
- Ahead of the release of updated guidance, the submission submits that businesses wanting to avoid greenwashing should follow one 'basic principle':



'Businesses should step into the shoes of a consumer who is looking to make a more sustainable purchasing decision'.

- In addition, the ACCC suggest that before making any ESG claims businesses should consider the following questions:
 - 'What does an ordinary consumer understand these claims to mean?
 - Does the product or business live up to this understanding?'

The regulator comments that if the 'answer to the second question is no, then there is a significant risk of greenwashing'.

[Note: For context, the ACCC conducted an 'internet sweep of environmental claims' looking at 247 businesses across eight sectors in 2022. The headline finding to emerge is that the risk of greenwashing is widespread – 57% of the 247 businesses reviewed were identified as having made concerning claims about their environmental credentials. You can read more about the ACCC's findings here: [ACCC internet sweep reveals 'widespread' greenwashing concerns - Insight - MinterEllison](#)]

[Source: ACCC submission to the Senate Standing Committee on Environment and Communications Inquiry into Greenwashing]

In Brief | TNFD Recommendations set to launch 18 September 2023 together with updated and additional guidance for financial institutions, nonfinancial sectors and biomes

[Source: TFND Newsletter 03/07/2023]

In Brief | Ahead of the introduction of mandatory, ISSB-aligned sustainability requirements in Australia, CA ANZ and Deloitte have released a series of guides to assist financial professionals and finance teams to prepare

[Source: CA ANZ media release 28/06/2023]

In Brief | Professor Pamela Hanrahan has cautioned that in light of 'the regulators' increased focus on greenwashing in forward-looking ESG statements, companies and boards...need to pay even closer attention to whether these statements about the future have a clear and documented reasonable foundation before they are made'

[Source: Beware of forward-looking ESG statements: Pamela Hanrahan 01/07/2023]

In Brief | New report flags that 'many climate-scenario models' used by the financial services sector are 'significantly underestimating climate risk' in that they 'exclude many of the most severe impacts we can expect from climate change' eg tipping points and second order impacts

[Sources: Institute and Faculty of Actuaries media release 04/07/2023; Full text report: The Emperor's New Climate Scenarios]

In Brief | The role of Chairs (and boards) can play in building and enhancing trust through the sustainability transition – new guide released

[Source: CGI guide: The Chairperson's Guide to Climate Integrity Earning and Enhancing Trust through the Sustainability Transition July 2023]

In Brief | Australia has joined the G7 backed 'Climate Club' - a 'global initiative launched in December 2022 to accelerate the implementation of the Paris Agreement'

[Sources: Prime Minister Anthony Albanese media release 10/07/2023; G7 Climate Club]

Financial Services

Legislation to establish the long-awaited CSLR has received Assent

The three Bills – [Treasury Laws Amendment \(Financial Services Compensation Scheme of Last Resort\) Bill 2023](#), [Financial Services Compensation Scheme of Last Resort Levy Bill 2023](#), and [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2023](#) - to establish the Compensation Scheme of Last Resort (CSLR) and supporting levy framework passed both houses without amendment on 22 June 2023 and received Assent on 3 July 2023.

What is the CSLR?

[Hayne Recommendation 7.1](#) (and before that, the Ramsay Review) recommended the establishment of a CSLR.

Broadly, the CSLR will provide compensation of up to \$150,000 to eligible consumers where:

- a determination in their favour has been made by the Australian Financial Complaints Authority (AFCA) but has not been paid by the relevant financial firm; and
- the determination relates to a financial product or service within the scope of the CSLR scheme; and
- AFCA has already taken 'appropriate steps' to require the firm to pay the relevant amount; and
- the consumer has notified AFCA within 12 months of the determination that they haven't been compensated and applied to the operator of the CSLR for compensation.

The CSLR will be operated by a subsidiary of the Australian Financial Complaints Authority (AFCA), operating on a not for profit basis.

The CSLR operator will be managed by a board consisting of an independent Chair appointed by the Minister for Financial Services, a member of the AFCA board and an actuary with at least five years actuarial experience.

Funding

The Commonwealth will fund the establishment of the scheme and part of its initial operation. A levy will then be imposed on certain parts of the financial services industry to fund the scheme's ongoing operation.

The ten largest banking and insurance groups (excluding health insurers and superannuation groups) will also be required to pay a one-off levy to fund the backlog of accumulated unpaid claims (and AFCA's unpaid fees relating to those claims) relating to complaints made to AFCA between 1 November 2018 and 7 September 2022.

Minimal changes from what was previously proposed

The CSLR proposed to be established by the new Bills – [Treasury Laws Amendment \(Financial Services Compensation Scheme of Last Resort\) Bill 2023](#); [Financial Services Compensation Scheme of Last Resort Levy Bill 2023](#); and [Financial Services Compensation Scheme of Last Resort Levy \(Collection\) Bill 2023](#) (together the 2023 CSLR Bills) – is similar to the scheme put forward previously.

Announcing the (re)introduction of the legislation, Assistant Treasurer Stephen Jones [commented that](#) the 2023 Bills:

'reflect the same intent and are substantively the same as the legislation considered by parliament last year. Minor and targeted amendments to reflect the passage of time and further stakeholder feedback have been made'.

Importantly, and consistent with the previous Bills, the proposed CSLR does not include managed investment schemes (MISs) and (as flagged above) the \$150,000 cap on individual claims is also unchanged.

[Note: The government has [launched a review](#) of the managed investment scheme framework. A consultation paper is expected to be released 'mid-year', with findings due to be reported to the government by 'early 2024']

Timing

- The CSLR operator will be able to begin to make compensation payments after the 'first levy period', the start date of which is to be determined by the Minister for Financial Services. Assistant Treasurer Stephen Jones has [said that](#)

'Consumers will be able to lodge claims for compensation from April 2024, with the first compensation payments to follow shortly thereafter'.

- In a [statement](#) responding to the passage of the legislation, AFCA noted that since April 2020 AFCA has paused complaints against insolvent financial firms while awaiting detail of the scope and timing of a CSLR. Following the passage of the legislation, AFCA will now commence reviewing the status of these 4875 paused complaints.

[Sources: Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023; Financial Services Compensation Scheme of Last Resort Levy Bill 2023; Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023]

New CSLR Regulations registered

New regulations - [Corporations Amendment \(Financial Services Compensation Scheme of Last Resort\) Regulations 2023](#) - to support the operation of/transparency around the levy scheme underpinning the new compensation scheme of last resort (CSLR) were registered on 6 July 2023 and are now in force. Broadly, the regulations prescribe:

- the information that the CSLR operator needs to include in the Notice required to be given to the Minister, if a revised claims, fees and costs estimate '[could cause the sub-sector levy cap for a levy period and a sub-sector to be exceeded \(or further exceeded\)](#)'; and
- the information that must be included in the CSLR operator's report at the end of each levy period. This includes information about '[the number and scope of applications for compensation, the number and details of any determinations made by the Minister, and the amount of compensation paid](#)'.

[Source: Corporations Amendment (Financial Services Compensation Scheme of Last Resort) Regulations 2023]

UK Regulator wants to see banks make faster progress on improving rates for savers

Ahead of the new Consumer Duty requirements at the end of the month, the UK Financial Conduct Authority (FCA) has [announced](#) it has met with representatives from the UK's largest banks and building society to 'challenge' them on the progress they are making toward improving rates for savings customers, urge them to 'accelerate' their work in this area, and clarify regulatory expectations. This is part of the regulator's broader efforts to monitor the savings market and lenders' decision making in this context.

The FCA has indicated its intention to release further guidance for lenders around its expectations. The regulator has also confirmed it still plans to report at the end of July on 'how the savings market is supporting savers to benefit from higher interest rates' and what further steps may be required to be implemented by lenders.

Australia: ACCC retail deposits inquiry

- Australian banks are under similar scrutiny from the Australian Competition and Consumer Commission (ACCC).
- On 14 February 2023, the Treasurer [directed](#) the ACCC to undertake an inquiry into the supply of retail deposit products (ie savings accounts, transaction accounts and term deposits etc) in Australia for completion and report by 1 December 2023.
- As part of this inquiry, the ACCC released an [issues paper](#) in April seeking feedback on competition and consumer issues affecting retail deposit products. The due date for submissions was 19 May 2023.
- Key issues on which feedback was sought included (among others):
 - how/to what extent, ADIs compete in providing retail deposit products to consumers (including with respect to setting interest rates and other fees and charges).
 - how effective competition in the supply of retail deposit products is in delivering good outcomes for consumers
 - the potential for new entry in the supply of retail deposit products and the barriers to entry and/or expansion in the supply of retail deposit products
 - how banks and other authorised deposit-taking institutions set their rates on retail deposit products
 - what factors 'influence how closely and quickly retail deposit and lending interest rates are adjusted following a change in the cash rate target' and how this varies between categories of retail deposit products
 - the extent to which ADIs are influenced by the interest rate decisions of other ADIs
 - How easy or difficult it is for consumers to switch products (and what the barriers to switching are)

- A full list of consultation questions is included at [p24-25 of the Issues paper](#).
- As flagged, the ACCC is due to provide its report to the Treasurer by 1 December 2023

[Sources: FCA media release 06/07/2023; ACCC media release 21/04/2023]

Consultation: Proposed changes to tax laws aimed at reducing compliance costs for general insurers

- The government has opened a [short consultation](#) (11 days) on a [draft Bill](#) that proposes to amend the Income Tax Assessment Act 1997 (Cth) to broadly align the treatment of general insurance contracts with the AASB17 accounting standard.
- The [purpose](#) of the proposed change is to reduce the regulatory burden for general insurers from maintaining different sets of records for tax and accounting purposes.
- The measure was announced in the 2023/4 Federal Budget.
- The due date for submissions is 21 July 2023.

[Source: Treasury consultation: Taxation of general insurers – Aligning tax treatment of contracts with AASB17 10 July 2023 - 21 July 2023]

In Brief | Assistant Treasurer Stephen Jones has said the government plans to consult on what form strengthened obligations on lenders to protect consumers from online scams should take before the end of 2023 with a view to having new requirements in place in 2024

[Source: Transcript: Interview with Rebecca Levingston ABC Radio Brisbane 11/07/2023]

In Brief | The CEOs of Australia's four major banks are set to appear before the House Standing Committee on Economics on 12 and 13 July. Banks' efforts to protect customers from online scams is planned to be one area of focus

[Sources: House of Representatives Standing Committee on economics media release 11/07/2023; Programs]

In Brief | US Federal Reserve Board Vice Chair has given a speech emphasising the 'fundamental' role capital plays in ensuring the ongoing stability of the financial system and outlining proposals to strengthen capital standards for larger banks. Implementation of the proposed reforms (which are still subject to consultation) is expected to take 'several years'

[Source: Speech by US Federal Reserve Vice Chair for Supervision Michael S Barr, Holistic Capital Review, at the Bipartisan Policy Center, 10/07/2023]

In Brief | US regulators order bank to pay \$250m in fines and compensation to customers over 'junk fees, withholding credit card rewards, and opening fake accounts'

[Source: Consumer Financial Protection Bureau media release 11/07/2023]



Accounting and Audit

FRC considers continued supervision of the big audit firms remains necessary following the latest round quality inspections

The UK Financial Reporting Council (FRC) has released the results of its annual inspection of the largest audit firms (BDO, Deloitte, EY, Grant Thornton, KPMG, Mazars and PwC).

In essence, the regulator considers audit quality is improving overall, but that (disappointingly) increased supervision of the big firms continues to be necessary to address 'significant' issues.

According to the FRC:

- Audit quality continues to show improvement over time: 77% of audits inspected were 'deemed good or required limited improvement' (up from 67% in 2020)
- The number of firms with zero audits requiring significant improvements also continues to decrease. This year only 3% of audits fell into this category (down from 7% in 2021/22). Also, five firms had no audits in this category.
- Audit standards at two firms (Mazars and BDO) is still considered to be 'below the standard' of the other firms – though the regulator considers both showed improvement on last year. For example, the percentage of audits considered 'good' or 'requiring only limited improvement' increased at both firms – 69% of BDO audits and 56% of Mazars audits fell into this category (up from 58% and 50% respectively). Despite the improvement, the regulator expressed 'disappointment' with the overall results for these firms.



[Source: FRC media release 06/07/2023]

Insolvency and Reconstruction

ASIC imposes five year ban on director over their involvement in phoenix activity

- The Australian Securities and Investments Commission (ASIC) has imposed a five year ban (until 15 May 2028) on a director over their involvement in five failed companies.
- The ban was imposed because ASIC found that the director failed to meet their obligations as a director and because they were found to have engaged in illegal phoenix activity.
- Four of the companies were involved in the property and construction industry, while the fifth company operated in the rental, hiring and real estate services industry.
- At the time of ASIC's decision, the companies owed a combined total of \$20,105,830 to unsecured creditors including approximately \$58,741 owed to Australian Taxation Office.

[Source: ASIC media release 06/07/2023]



In Brief | The AASB-AUASB have reissued their joint publication Going Concern and Related Assessments which outlines director and management responsibilities in assessing solvency and going concern and how this impacts on the preparation of financial statements and auditor responsibilities

[Source: Joint publication by the AASB and AUASB: Going Concern and Related Assessments Reissued June 2023]

Risk Management

Stronger protections for telco customers in financial hardship: New enforceable industry standard to be rolled out, existing Code to be strengthened

Communications Alliance is currently undertaking a review of the Telecommunications Consumer Protections (TCP) Code (Code), ahead of the expected registration of the Code in late 2024.

As part of this process, the Australian Communications and Media Authority (ACMA) has released a position paper - [What consumers want – Consumer expectations for telecommunications safeguards](#) - outlining its views of the current Code and highlighting the areas where it considers current consumer safeguards are 'inadequate and require substantial improvement'. [Announcing](#) this, ACMA Chair Nerida O'Loughlin commented:

'The ACMA has been concerned for some time that the current co-regulatory code is not delivering the level of consumer safeguards expected of an essential service...Our position paper

shows that telcos are falling short of what customers want in key areas such as selling practices, credit assessments, payment methods, disconnection processes, financial hardship assistance and the treatment of consumers in vulnerable circumstances, including those experiencing domestic and family violence'.



New enforceable industry standard

Minister for Communications Michelle Rowland has [announced](#) plans to direct ACMA to make an enforceable industry standard for the telecommunications sector enshrining stronger consumer protections for consumers experiencing financial hardship.

Ms O'Loughlin [welcomed](#) this development, observing that it will mean ACMA has 'a more powerful range of enforcement tools' available. Ms O'Loughlin also underlined ACMA's expectation that industry prioritise addressing the concerns raised in the position paper over the next six months.

'Given the current impact of cost-of-living pressures we will move quickly to implement the new rules to give early and stronger protection for these consumers. Telco improvements on other matters raised in our position paper are also urgent and cannot wait until the proposed TCP Code review end date of late 2024. We expect the industry to demonstrate significant progress towards addressing these issues in the next six months. If the industry is unwilling to do so, we believe there is compelling evidence to support moving these protections into direct regulation.

[Sources: Minister for Communications Michelle Rowland media release 06/07/2023; ACMA media release 06/07/2023]

Parliamentary Inquiry into Australia's Human Rights Framework: Time to introduce an Australian Charter of Human Rights?

- On 15 March 2023, the Attorney General tasked the Parliamentary Joint Committee on Human Rights with [inquiring into](#) the scope and effectiveness of Australia's human rights framework ([Terms of Reference](#)). The Committee is due to report by 31 March 2024.
- The [Charter of Rights Campaign Coalition](#) – a coalition of over 90 organisations, led by the Australian Human Rights Commission - [submission](#) recommends the introduction of a legislated Australian Charter of Human Rights as a means of:
 - preventing human rights violations eg by ensuring governments consider human rights when developing new laws/policies and/or delivering services (eg Medicare, aged care) and education funding
 - providing a mechanism to 'challenge injustice' – individuals could take action if their rights under the charter are violated
 - promoting/fostering understanding and respect for human rights
- Separately, the Australian Human Rights Commission's (AHRC) [submission](#) enlarges on this, putting forward ten recommendations for a new National Human Rights Framework, with a new National Human Rights Act (the model for which is included in the [AHRC's 7 March 2023 position paper](#)) as the 'centrepiece'.
- The proposed model for a new Australian Human Rights Act put forward by the AHRC is [supported](#) by Professor George Williams.

Timeline

- The submissions window has now closed.
- Public hearings are set to be held in Brisbane and Melbourne in August and in Sydney in September.
- As flagged, the Committee is due to report by 31 March 2024.

[Sources: Parliamentary Joint Committee on Human Rights: Submissions]

In Brief | As part of its five year inquiry into markets for the supply of digital platform services in Australia and their impacts on competition/consumers, the ACCC has released an issues paper seeking feedback about data broker services in Australia. The due date for submissions is 7 August 2023

[Source: ACCC consultation: Data broker services in Australia 10/07/2023]

Misconduct and Liability

In Brief | Markets Disciplinary Panel has handed down a \$4.5m penalty to one of Australia's largest retail broking businesses over (admitted) breaches of market integrity rules. Announcing this, ASIC said that the outcome 'sends a clear message to market participants that breaches of market integrity rules will result in substantial penalties that should not be seen as a cost of doing business'

[Source: ASIC media release 06/07/2023]

In Brief | Commonwealth penalty unit increase: The value of the Commonwealth penalty unit increased from \$275 to \$313 effective from 1 July 2023. The Commonwealth penalty unit is automatically adjusted in line with the Consumer Price Index (CPI) every three years from 1 July 2023.

[Sources: ASIC: fines and penalties; Crimes Amendment (Penalty Unit) Bill 2022 (Cth)]

Other News

Top Story | FIRB Update: Important changes to the foreign investment regime in Australia

MinterEllison has released an article breaking down key changes to Australia's foreign investment framework. You can access the full text here: [FIRB Update: Important changes to the foreign investment regime in Australia - Technical update - MinterEllison](#)

Top Story | MinterEllison's Guide to the National Anti-Corruption Commission

MinterEllison has released a practical guide for public officials and private companies who interact with the Commonwealth government to understand the scope of the National Anti-Corruption Commission (NACC).

You can access the full text here: [MinterEllison's Guide to the National Anti-Corruption Commission - Guide - MinterEllison](#)

Has this newsletter been forwarded to you? You can subscribe to our weekly wrap up of key governance, risk, regulatory and ESG developments [here](#).



Contacts



Mark Standen
Consultant

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



Siobhan Doherty
Partner

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



Kate Hilder
Consultant

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