



Governance News

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

5 July 2023

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Diversity

88 cents in the dollar: An initial look at workplace gender equality indicators in the public sector highlights scope for improvement

Ahead of the introduction of mandatory reporting requirements, the Workplace Gender Equality Agency (WGEA) invited Commonwealth entities – both agencies who employ staff under the Public Service Act 1999 (Cth) (APS agencies) and non-APS agencies – to voluntarily report their gender equality data. WGEA has now [reported on the findings](#) of this exercise, based on the responses received from the 40 APS agencies and 12 non-APS agencies who elected to participate.

The WGEA notes that because not all entities participated in what was a voluntary exercise, the data does not reflect the public sector as a whole. As such, the WGEA considers that



the report [should be viewed](#) as 'an appetiser for policy makers, employers and the broader public to understand gender equality in the Commonwealth public sector' ahead of the release of a more comprehensive report next year.



Key Takeaways

- **The gender pay gap persists:**
 - The gender pay gap (based on total remuneration) for the Commonwealth employers that reported to WGEA is 11.6% in favour of men.
 - Interestingly, non-APS employers reported a higher gender pay gap (13%) than APS employers (7.2%)
- **Acting on the gender pay gap:**
 - 56% of employers reported they had undertaken a gender pay gap audit and of this group, 68% reported they had taken action following the exercise.
 - WGEA found that the most common action taken was reporting the results of the audit to the executive (84%).
 - Only 37% of employers reported reviewing remuneration decision-making processes (37%) following a gender pay gap audit. Even fewer employers took the step of reporting pay equity metrics (including gender pay gaps) to all employees (21%) or setting targets to reduce the organisation-wide gap (21%).
- **Men are more likely to be in the top salary bracket:**
 - The WGEA highlights that while one in three men (32.7%) are in the top income bracket only 1 in 5 women (19.4%) are in the same category.
 - Looking at the lowest income bracket, this trend is reversed: 28.7% of women/one in three women earn below \$94,000 vs 19.8% (or one in five) men.
- **Use of gender targets is relatively widespread:**
 - 67% of employers had set gender targets.
 - According to the WGEA, targets focused on: a) increasing the number of women in leadership roles (40% of cases); and b) increasing the number of women in male-dominated roles (19% of cases) were the most common.
 - The report highlights that use of targets focused on men was much lower. For example: only 4% of employers who participated in the exercise had set targets for increasing the number of men in female-dominated roles and only 10% had set targets for men taking up flexible work arrangements/taking parental leave.
- **Flexible work:**
 - All employers reported having a flexible work policy in place and most (96%) report they promote flexible working throughout their organisation.
 - As flagged, very few employers set targets for engagement in flexible work for all staff or specifically for men to take up flexible work
 - The report highlights that far fewer men than women take parental leave. According to the WGEA, men account for just 13.5% of primary carer's leave taken. Interestingly, men in management roles are more likely to take up primary carer's leave (19.6%).
- **More employers consult with staff on gender equality:** Despite not having a formal policy on consultation on workplace gender equality in place in most cases (67%), most (80%) of employers reported that they consult staff on gender equality.

[Source: WGEA Workplace Gender Equality Snapshot]

Shareholder Activism

21% of J-Power shareholders back shareholder GHG targets proposal

J-Power shareholders (shareholders in the Electric Power Development Company Ltd) [rejected](#) both shareholder environment-focused proposals that went to a vote at the 27 June shareholder meeting, in line with the [board's recommendation](#).

According to the [ACCR](#):

- 21% of shareholders voted in support of a shareholder proposal calling for new requirements for the company to set and disclose science-based, Paris-aligned short and medium term emissions reduction targets to be included in the company's Articles of Association.
- 15% of shareholders backed a second shareholder proposal calling for new requirements for the company to report on how remuneration policies would incentivise progress against the company's emissions reduction target to be incorporated into the company's Articles of Association.

You can find the full text of each of the proposals together with the justification given for filing each on the ACCR website [here](#).

In light of these vote results and in light of last years' vote result - 26% of shareholders voted in support of a 2022 shareholder proposal calling on the company to set a Paris-aligned decarbonisation strategy (including setting short, medium and long term targets) - the ACCR has reiterated its calls on J-Power to reassess its approach.

ACCR Executive Director Brynn O'Brien [commented](#):

'These results are a clear and consistent signal from over a fifth of J-POWER shareholders that they expect the company to set a more credible decarbonisation strategy. We expect this motivated and active investor cohort to keep pushing J-POWER's board hard'.

[Source: ACCR media release 28/06/2023]



Meetings and Proxy Advisers

Early insights from the US meeting season: Report finds 'Say on pay' failure rate is down on last year, remains high (though this is trending slightly down)

Semler Brossy's latest [report](#) provides early insights into proxy voting results and trends for 2023, based on analysis of vote results from 1847 Russell 3000 companies. Our key takeaways are below.

'Say on Pay'

- Approval rate remained high:
 - The average approval rate for 'say on pay' resolutions remained high at 90% (for context, according to the report, average level of support has hovered around 90% since 2018)
 - The percentage of Russell 3000 companies receiving 90% or more support in 2021 stood at 72% (down slightly on 2022)
- Failure rate fell:
 - The failure rate for say on pay resolutions (2.1%) is down on the same time last year (3.4%)
 - Looking at it by sector, the failure rate was highest in the Healthcare and Communication Services sectors (both 4%) and lowest in the Utilities sector (0%)
- Leading causes of failure to approve 'say on pay' resolutions: The report identifies a number of drivers behind 'say on pay' failures at individual companies. The most common contributing factors are identified as: 'pay and performance relation' and 'problematic pay practices'.

Director Elections

- Average support for director nominees standing for election/re-election remains high at 94.4% so far in 2023 (down from 94.5% for 2022)
- The report flags that the average level of support for the directors of companies where the 'say on pay' resolution in the previous year failed, is (somewhat) lower at only 90%
- The report also highlights that the proportion of director nominees that received 95% or more backing continued its downward trend from 73.7% in 2021, to 70.3% in 2022 to 68.4% in 2023 (so far this year)

E&S resolutions

Environmental resolutions

The report found that the support for shareholder environment-focused proposals looks to be continuing its downward trend:

- The median level of support for environment-focused proposals was found to have fallen from a high of 46% in 2021 to 27% in 2022 to 18% so far this year.
- Two (of 93) shareholder environmental proposals have received majority support so far this year.

Social resolutions

Similarly, the support for social resolutions (eg disclosure of board diversity, disclosure of EEO1 data) also looks to be decreasing:

- The median level of support for social proposals has fallen from a high of 32% support in 2021 to 22% in 2022 to 15% so far this year
- Four social proposals this year have received greater than 50% support

[Source: Semler Brossy 2023 Say on Pay Report 29/06/2023]

Report confirms level the number of shareholder ESG proposals filed is up on last year (but the level of support is down)

A separate [report](#) from Georgeson highlights similar trends to those identified in Semler Brossy's analysis above.

For context, Georgeson's report is based on data (including meeting results) for meetings occurring between 1 July 2022 and 12 May 2023 at Russell 3000 companies.

Number of shareholder proposals filed is up on last year (but the level of support is down)

According to Georgeson's analysis:

- 951 shareholder ESG proposals were filed this proxy season (up from 941 in 2022).
- the level of support for shareholder ESG proposals is down on prior years. This is attributed to the increasing specificity of demands/prescriptive nature of the proposals (as compared with previous years). To illustrate, Georgeson found that the average level of support for environment-focussed proposals has declined from an average of 38% in 2022 to 26% in 2023.
- Fewer ESG proposals have secured majority support this year (as compared with 2022). According to Georgeson's analysis approximately 7% of environmental proposals, 3% of social proposals and 13% of governance proposals (excluding any anti-ESG proposals) had passed.

Shareholder 'E' proposals

- According to the report, 185 shareholder environment-focussed proposals were filed in 2023 (up from 177 in 2022).
- According to Georgeson's analysis, the 'vast majority' of these proposals focus on greenhouse gas (GHG) emissions reduction including target setting and climate transition plans. Of GHG emissions reduction proposals, most (82%) concern Scope 3 (value chain/supply chain) emissions as opposed to Scope 1 and 2 emissions (only 18% of proposals focus on Scope 1 and 2 emissions reduction). Georgeson suggests this shift reflects the shift/evolution of disclosure at the companies being targeted.
- According to the report, Scope 3, emissions reduction proposals were the most commonly withdrawn proposals suggesting that 'companies are willing to engage in direct negotiations and agreement to action on this topic'.
- In terms of the level of support for Scope 3 emissions proposals – the report found that the average level of support was 28% (based on the 13 proposals voted at the time the report was written), down from an average of 46.7% support in 2022.

[Note: The [newly minted global sustainability disclosure standards](#) released by the ISSB and which are expected to form the core of emerging (and mandatory) sustainability-related financial disclosure requirements globally, including in Australia, require Scope 3 emissions disclosure. See: [Step change in sustainability reporting: First two ISSB standards released - Why the release of the first two global sustainability standards is such a big deal - MinterEllison](#).]

Anti-ESG proposals are also up (though support for these proposals remains very low)

Georgeson found that the volume of anti-ESG proposals is also up in 2023 accounting for over 9% of proposals so far in 2023, though the level of support remains low – anti-ESG proposals have so far secured an average of 6.2% support in 2023 (down from 9.2% in 2022).

Support for directors continues to be high

- According to the report, support for directors at Russell 3000 companies continues to be strong, averaging 94.9% for the proxy year 2023 YTD.
- The report also highlights that in the period from 1 January to 12 May 2023, 12.9% of directors received less than 90% vote support (vs 6.6% in 2022.)

Support for 'say on pay' also continues to be strong

- Similarly, the report found that the level of support for 'say on pay' proposals was high - the average support for Russell 3000 companies, was 91% (excluding abstentions) (vs 90% support in the proxy year 2022)
- 26 Russell 3000 companies have failed to receive majority support for their say-on-pay proposals so far in the 2023 season, with 12 failed votes occurring since 1 January 2023.

[Sources: Full text report: An early look at the 2023 proxy season]

ESG

CGI Australia event | Climate Governance Forum, 11 August 2023

The Australian Institute of Company Directors, as host of the [Australian Chapter](#) of the [Climate Change Governance Initiative](#) (CGI) is holding a Climate Governance Forum as a hybrid event on 11 August 2023.

The focus of the Forum is how boards and directors can best navigate the challenges of climate change.

The Climate Governance Forum brings together leading experts, including ASIC Deputy Chair Sarah Court and [Sarah Barker](#) (Partner and Head of Climate Risk Governance, MinterEllison) to share their views on key challenges facing boards including: how to prepare for mandatory reporting requirements, where biodiversity fits into the broader sustainability conversation and what this means for boards, and insights into how directors can mitigate greenwashing risk.

You can find the full list of speakers and the full program [here](#).

You can register to attend the forum in person [here](#), or virtually [here](#).

IAASB to consult on overarching standard for assurance on sustainability reporting in August 2023

- The International Auditing and Assurance Standards Board (IAASB) has [announced plans](#) to consult publicly on a new sustainability assurance standard - draft International Standard on Sustainability Assurance (ISSA) 5000, General Requirements for Sustainability Assurance Engagements – in August 2023.
- Once finalised, the new standard is intended to be an overarching standard for assurance on sustainability reporting, addressing both limited and reasonable assurance.
- It's envisioned that the new standard will 'enhance confidence' in sustainability reporting and complement the work of other standard setters including the International Sustainability Standards Board (ISSB). The IAASB comments:

'It will apply to sustainability information reported across any sustainability topic and prepared under multiple frameworks. Moreover, the standard will be profession-agnostic, enabling its use by professional accountants and other professionals performing sustainability assurance engagements'.

Australia: Where does the IAASB standard fit in?

- The [ISSB standards](#) are expected to form the core of emerging (and mandatory) sustainability-related financial disclosure requirements globally, including in Australia. See: [Step change in sustainability reporting: First two ISSB standards released](#)
- The Australian government conducted an [initial round of consultation \(summarised\)](#) on the proposed approach to developing mandatory climate-disclosure standards closed in February 2023. On 27 June, Treasury released a [second consultation paper \(summarised\)](#) seeking feedback on a number of proposals around implementation, including assurance requirements. On this point, [the consultation paper](#) makes clear that new requirements are planned to align with the IAASB standard:

'To minimise compliance costs for entities that operate internationally, assurance should be aligned with IAASB standards as far as possible'.

[Source: IAASB media release 28/06/2023]

Pushing for corporate action on nature loss: NA100 outlines investor expectations, announces intention to target eight sectors

Pushing for timebound actions across six areas

- The overarching aim of investor engagement initiative Nature Action 100 (NA 100) is to accelerate corporate action to 'protect and restore nature and ecosystems' and importantly, also mitigate the associated financial risk.
- NA 100 has announced that the focus of its engagement efforts will be on pushing companies to implement the following actions:

- 'Publicly commit to minimise contributions to key drivers of nature loss and to conserve and restore ecosystems at the operational level and throughout value chains by 2030'.
 - 'Assess and publicly disclose nature-related dependencies, impacts, risks, and opportunities at the operational level and throughout value chains'.
 - 'Set time-bound, context-specific, science-based targets informed by risk assessments on nature-related dependencies, impacts, risks and opportunities. Disclose annual progress against targets'.
 - Develop a company-wide plan on how to achieve the targets set and disclose progress against the plan annually. The group further expects that plans should 'be developed in collaboration with Indigenous Peoples and local communities when they are affected'.
 - 'Establish Board oversight and disclose management's role in assessing and managing nature-related dependencies, impacts, risks, and opportunities'.
 - 'Engage with external parties including actors throughout value chains, trade associations, policy makers, and other stakeholders to create an enabling environment for implementing the plan and achieving targets.'
- Each of the 'focus companies' will be sent a copy of these expectations prior to engagement.

Eight sectors to be targeted

- NA 100 [is set to target](#) its efforts on companies in the following eight sectors:
 - biotechnology and pharmaceuticals
 - chemicals (eg agricultural chemicals)
 - household and personal goods
 - consumer goods retail
 - food (food producers/processors)
 - food and beverage retail
 - forestry and paper
 - metals and mining.
- Engagement with these sectors has been prioritised because of they are considered to be 'systemically important in reversing nature and biodiversity loss by 2030' – NA 100 states that these sectors are:

'major drivers of nature loss due to their large impacts on habitat loss, overexploitation of resources, and soil, water, and solid waste pollution'.
- NA 100 plans to release a list of focus companies 'later' this year.

[Source: NA100 media release 26/06/2023]

Senate Greenwashing Inquiry | The AICD considers there is 'no legislative gap' and therefore no justification for legislating a new greenwashing offence in Australia, does support additional (and more detailed) regulatory guidance

- 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'.
- A key message in the Australian Institute of Company Directors' (AICD) [submission](#) to the inquiry is that tackling greenwashing does not require legislating a new 'greenwashing specific provision or offence'. This is because, it is submitted, greenwashing is already prohibited (and being enforced) under existing laws (ie the existing prohibition on misleading or deceptive conduct). As such, the AICD considers that:

'there is no legislative gap in the current law on misleading or deceptive conduct as it applies to greenwashing. Legislating a specific greenwashing offence would be duplicative, and create unnecessary legal complexity given existing misleading and deceptive conduct laws. Such an approach would run contrary to sound policy making which encourages reducing legislative complexity – see for example, attempts by the Australian Law

Reform Commission to simplify financial services laws in Australia, including the laws on misleading or deceptive conduct'.

- The AICD does consider there is scope to clarify how the existing 'reasonable grounds' test applies to forward looking statements in this context.
- The AICD also considers there is a need for additional regulatory guidance to aid understanding of what organisations need to do to ensure their sustainability disclosures meet existing requirements. It's submitted that regulatory guidance in Australia – eg ASIC's existing guidance (INFO 271) and the ACCC's 2011 'Green Guide'- is less detailed (and ultimately less helpful) than that provided in other jurisdictions – for example, the UK 'Green Claims Code'.
- The submission underlines the need to 'ensure liability settings are proportionate'. The AICD considers that the 'Australia has a particularly strict set of liability settings, having neither a safe harbour for forward looking statements where cautionary language is applied (as in the US), nor a requirement to establish intention or recklessness for private misleading or deceptive conduct claims (as in the UK)... Rather than penalising good faith disclosures made on a best endeavours basis, we consider government's focus should be on addressing data and methodology gaps to improve the accuracy and quality of disclosures'.

Proposed approach to liability in new (draft) climate disclosure requirements

- Australia is following many other jurisdictions in progressing the introduction of (broadly) ISSB-aligned mandatory sustainability disclosure standards, with a focus initially on climate-related disclosure.
- An initial round of [consultation \(summarised\)](#) on the proposed approach to developing the standards closed in February 2023. On 27 June, Treasury released a second consultation paper ([summarised](#)) seeking feedback on a number of proposals around implementation – who will need to report what when, and where they will need to do it.
- The consultation paper also seeks feedback on a proposed 'interim modified liability framework' – which would mean companies and officers would be temporarily shielded from misleading or deceptive conduct claims brought by private litigants for the first three years that new climate disclosure requirements are in place.

Next steps

The submissions window closed on 22 June 2022. The Committee is due to report by 5 December 2023. No public hearings have so far been announced.

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

Government announces environmental offsets crackdown, developers urged to 'check their house is in order'

The government has [announced](#) a 'full audit' of 1,000 environmental offset sites to ensure that developers are fulfilling their duties to protect nature. The audit is set to commence 'immediately'.

The announcement urges companies to 'check their house is in order and come forward to discuss any issues before the department comes knocking' and flags that penalties 'may be imposed for projects found to be in breach of their approval conditions'.

[Sources: Minister for the Environment and Water 29/06/2023]

US Treasury report assessing climate-related risk in the insurance context flags gaps in insurance supervision, makes 20 policy recommendations

The US Department of the Treasury's Federal Insurance Office (FIO) has released its [assessment](#) of the regulation/supervision of climate-related risk in the insurance sector by state regulators.

A key message is that though state regulators have made some progress towards incorporating oversight of climate-related risk into their supervision, 'their efforts remain at a preliminary stage' and they need to take further action to strengthen their approach and address various regulatory/supervisory gaps.

The report makes 20 recommendations to address these issues. Key recommendations include recommendations for:

- all state insurance regulators to develop and adopt climate risk monitoring guidance which 'should include expectations for insurers to incorporate climate-related risks into their annual financial planning, as well as into their long- and short-term risk management processes, as some states have done'
- all states to require 'that financial analysts and lead state analysts integrate climate-related considerations into their analysis'.
- all state insurance regulators to adopt 'a single standard for defining "materiality" for climate-related risks'
- state regulators to prioritise their work on scenario analysis
- the National Association of Insurance Commissioners (NAIC) to incorporate climate risk into future Macroprudential Risk Assessments

A full list of recommendations is included at [p2-6 of the report](#).

The FIO has indicated it intended to monitor and report on progress toward implementing the recommendations. The FIO has also said it intends to engage with the NAIC, state insurance regulators and other stakeholders on these issues.

[Sources: US Department of Treasury media release 27/06/2023; Full text report]

Global report ranks Australia second only to the US for climate litigation

A [report](#) analysing developments in climate change-related litigation globally, focussing on the June 2022 – May 2023 period highlights the continuing increase and global spread of this form of litigation. Our key takeaways are below.

- **Climate litigation continues to build momentum globally:**
 - of the 2341 climate litigation cases worldwide, half have been filed since 2015, and 190 were filed in the last 12 months
 - climate litigation is spreading to new jurisdictions – Grantham identified cases in China, Romania, Russia, Thailand and Turkey, Bulgaria and Finland over the last 12 months
 - Australia ranks second behind only the US in terms of the number of cases.

[Note: The [AGS released](#) a legal briefing on highlighting trends in climate change litigation in Australia in June 2022 which provides insight into the various categories of cases and includes summaries of (then) recent/significant climate cases]

- **Companies (as opposed to governments) are increasingly being targeted.** According to the report, though historically 70% of cases target governments, there appears to have been a shift over the last 12 months with only 54% of cases targeting governments.
- **There has been a spike in greenwashing litigation** (or 'climate washing' litigation) in recent years – of the 81 cases in this category filed globally during the 2015-2022 period, 26 cases were filed in 2022, and 27 were filed in 2021.
- **'Anti-ESG' or 'ESG backlash' litigation identified as an emerging trend in the US:** These cases are aimed at delaying/preventing climate action (eg cases challenging the government's power to regulate or intervene in certain areas) in line with the political pressure being brought to bear eg by Republican State Attorney's General. The report comments that these cases are difficult to identify accurately as 'climate' related cases (given the definition employed in the report).
- **'Diverse' impacts of climate litigation:** The report underlines the complexity and difficulties inherent in accurately tracing the wide-ranging and diverse impacts of climate litigation. Having said this, the report suggests that approximately 55% of the 549 cases where an interim/final decision has been handed down, resulted in outcomes that are considered 'favourable to climate action (bearing in mind that the climate action resulting from a 'favourable outcome' may not always be straightforward to identify). The report also points to a recent interdisciplinary study which suggests that:

'lenders, financial regulators, and governments should consider climate litigation risk as a material financial risk, since the observed decline in firm value suggests that the market is already responding to litigation risk'.

[Sources: Grantham Research Institute on Climate Change and the Environment media releases 29/06/2023; 29/06/2023; Grantham's summary of the 'key messages'; Full text report: Global trends in climate change litigation 2023 snapshot;

Encouraging SMEs to electrify: Consultation on draft Bill, grants to SMEs

- The government has opened a [short consultation](#) on [draft legislation](#) aimed at incentivising small and medium businesses to electrify by offering a 'bonus tax deduction' (up to \$20,000) for the cost of eligible depreciating

assets that support electrification/more efficient energy use. It's proposed that the new incentive would apply from 1 July 2023 until 30 June 2024.

- Separately, the [government has announced](#) that 690 SMEs are set to receive grants of up to \$25,000 to invest in energy performance technology under the government's Energy Efficiency Grant Program. The second round of grants is set to open in early 2024.

[Sources: Treasury Consultation: Small Business Energy Incentive 04/07/2023 – 18/07/2023; Government media release 04/07/2023]

In Brief | Reuters reports that BlackRock CEO Larry Fink will no longer use the term 'ESG' because he considers it has become too politicised. Reportedly, Mr Fink has said that the shift in terminology does not signal a shift in BlackRock's stance on environmental, social and governance issues

[Source: Reuters 26/06/2023]

In Brief | The Bank of Thailand, together with the Securities and Exchange Commission have announced the release of what is planned to be the initial phase of sustainable finance taxonomy - Thailand Taxonomy Phase 1 – a (voluntary) central standard for categorising 'green' projects. Phase 1 includes energy (supply) and transport sectors. Phase 2 is planned to extend to cover agriculture, construction, real estate, and waste management sectors

[Sources: Bank of Thailand and Office of the Securities and Exchange Commission media release 01/06/2023; Thailand taxonomy overview]

In Brief | The Monetary Authority of Singapore is consulting on a proposed Code of Conduct for ESG rating and data product providers. The Code would include minimum disclosure requirements as well as expectations around management of conflicts of interest. It's proposed that adherence to the Code requirements would be on a comply or explain basis

[Source: Monetary Authority of Singapore media release 28/06/2023]

In Brief | Coal phase out: Singapore is consulting on proposed criteria for financing the early phase out of coal-powered power plants under the Singapore-Asia Taxonomy

[Source: MAS media release 28/06/2023]



Markets and Exchanges

Diluting investor protections: Investors raise concerns about proposed changes to UK Listing Regime

What's being proposed?

- In May 2023, the UK Financial Conduct Authority (FCA) opened an initial consultation on proposed changes to the UK Listing Rules aimed at attracting a wider range of companies to list in the UK (See: [Consultation paper: CP23/10](#))
- Broadly, the most important proposed change is a proposal to replace the current standard and premium listing share categories with a single new listing category for commercial company issuers of equity shares. Key listing eligibility requirements are also proposed to be relaxed to remove barriers to early-stage companies listing. The FCA comments that the proposed new approach would be:
 - 'more permissive on dual class share structures, and remove mandatory shareholder votes on transactions such as acquisitions to reduce frictions to companies pursuing their business strategies'.
- The rationale given for this is that the changes would remove actual/perceived barriers to companies electing to list in the UK, – eg that existing rules are seen as both too complicated and too onerous - and arrest/reverse the significant dip in UK listings since 2008.



- **Announcing** the release of the consultation paper, FCA CEO Nikhil Rathi acknowledged that the proposed change marks a shift in approach.

'Our proposed reforms would significantly rebalance the burden of regulation to the benefit of listed companies and investors who are willing to set their own risk appetite and terms of engagement...We want to encourage more companies to list and grow in the UK, versus other highly competitive international markets.'

- The consultation period closed at the end of June. The regulator has flagged it intends to issue a further consultation in 'autumn 2023'. This further consultation is planned to include draft Rules.

Other changes

Separately, the FCA has also released a [policy statement](#) summarising the feedback received in response to an earlier consultation and confirming the final changes to technical standards aimed at improving how equity secondary markets operate (See: [PS23/4: Improving equity secondary markets](#)).

The FCA [states](#):

'We aim to enhance execution quality for investors by lowering the cost of trading, reducing market impact and ultimately increasing liquidity. We also want to improve post-trade transparency. We have also amended requirements that impose costs on firms but have not delivered benefits to end users'.

Investors have raised concerns

- A group of [ten UK pension schemes](#) - Railpen, Brightwell, Brunel Pensions Partnership, The Church of England Pensions Board, HSBC Bank (UK), Pension Scheme, Merseyside Pension Fund, NEST, People's Partnership, TPT Retirement Solutions, Universities Superannuation Scheme (USS), Ten UK pension schemes - led by Railpen, have released an open letter to the UK Financial Conduct Authority raising concerns about the proposed changes. In essence, they consider the changes would (if implemented), both 'dilute investor protections and exacerbate current issues'. Head of investment risk and sustainable ownership at Railpen Michael Marshall, comments:

'We're supportive of a public debate on the UK capital markets and are keen to ensure our market thrives whilst maintaining the robust quality the UK is known for. The FCA's current proposals risk watering down that quality and reducing the pool of institutional and retail investors willing to invest in UK-listed companies...We welcome the opportunity to share ideas and discuss evidence-based approaches which could boost the UK's appeal without diluting investor protections.'

- Separately, the US-based Council of Institutional Investors has also [raised concerns](#) about the potential for the proposed changes to dilute investor protections. These concerns include (among others) the shift towards accommodating dual class share structures 'in perpetuity for companies listed on the single segment' (without the imposition of mandatory five year sunset requirements), the proposed treatments of SPACs and the potential replacement of financial eligibility requirements with disclosure.
- Norges Bank Investment Management (NBIM) has [raised similar concerns](#) – ultimately, NBIM considers that the proposed changes would 'result in weaker investor protection and could harm the UK's reputation as a market with high corporate governance standards'.

[Sources: FCA media release 03/05/2023; Consultation: CP23/10: Primary Markets Effectiveness Review – Feedback to DP22/2 and proposed equity listing rule reforms; Railpen media release 28/06/2023; CII media release 28/06/2023]

Financial Services

Enforcing adherence to pricing promises: Insurer fined \$40m over pricing failures, ASIC has cautioned it expects to take further court action

- Following the release of [REP 765 When the price is not right: Making good on insurance pricing promises](#) on 23 June 2023, an insurer has been fined \$40 million by the Federal Court over (historical) failures to honour/deliver in full, certain loyalty and no claims bonus discounts promised to customers.
- The key issue in this case was that the pricing algorithm used by the insurer, limited the discount customers could receive by applying a 'pricing floor' (or cupping mechanism) which prevented the cost of premiums from falling below a set minimum level. In consequence, consumers did not receive the full benefit of the promised discount.

ASIC has called on all general insurers to address this industry wide issue

- 'Misapplication' of pricing floors is highlighted in REP 765 as a relatively widespread issue. According to the report, six of the 11 general insurers identified misapplication of price floors as an issue within their business. Remediation connected with the issue is estimated at more than \$379 million (or close to half of the overall total amount expected to be paid by insurers in connection with pricing failures).
- The report makes clear that ASIC expects insurers to:
 - 'regularly examine their promotional material and disclosure documents to ensure that the disclosure on price floors is clearly understood by consumers and that any representations made are consistent with how the consumer's premium is calculated'.
 - 'consider how disclosure of the existence of price floors can influence consumers' behaviour, and improve transparency and engagement accordingly'.
 - 'regularly review their pricing algorithms to ensure that they are operating as expected and not contravening the law'. That is, ASIC's expectation is that pricing algorithms are structured so that the promised discount is applied after the price floor has been applied (not before this has occurred)
- [Announcing](#) the outcome in this case, ASIC again underlined its expectation 'all general insurers to remove unnecessary pricing complexity and fix their systems, practices and controls to ensure they deliver on the pricing promises they make to their customers'.
- Addressing failure by general insurers to deliver on their pricing promises is one of [ASIC's enforcement priorities for 2023](#). In line with this, ASIC observes that it has taken court action against a second insurer over similar issues and 'expect[s] to take further court action to address this misconduct'.
- You can find our article outlining the key findings in REP 765 and the practical steps boards of general insurers should consider taking in response on our website here: [ASIC calls on general insurers to sharpen their focus on nonfinancial risk in light of ongoing 'systemic pricing failures' - Report Overview - MinterEllison](#)

[Source: ASIC media release 30/06/2023]

DDO enforcement: ASIC takes aim at pet insurance, 'considering further stop orders for other insurance products'

The Australian Securities and Investments Commission (ASIC) has [announced](#) it has issued 38 interim stop orders preventing various insurers from selling 67 pet insurance products across different levels of cover.

ASIC's chief concern is that the target market for the products (in the target market determinations (TMDs)) was defined too broadly.

Key concerns

ASIC sums up its reasons for taking this action as follows:

'[insurers] failed to appropriately define the target market for these products using objective and tangible parameters. In particular, the insurers may not have properly considered the 'financial situation' (one of the key characteristics in the DDO regime) of consumers in the target market, such as their ability to afford premiums and to pay for treatments upfront before being reimbursed by the insurer (after a claim is approved).

ASIC was concerned that the insurers did not appear to properly consider whether the key terms, features and attributes of the products would be consistent with the objectives, financial situation and needs of consumers in the target market. In particular, in defining the target market, it appears that the insurers did not properly consider the requirement for consumers to pay for veterinary expenses in full and upfront before receiving a partial reimbursement under a claim'.

Insurers on notice

- This latest action by the regulator follows a 'risk based and targeted review of insurance TMDs and ASIC's announcement makes clear that it is 'considering further stop orders for other insurance products.
- It also follows the release of a report by ASIC ([REP 762](#)) ([summarised](#)) outlining the findings of ASIC's initial review into how investment product issuers are meeting their DDOs. REP 762 highlights a number of 'key market deficiencies' in the sample TMDs reviewed including: defining target markets too broadly and use of unsuitable risk profiles. From ASIC's latest action, it appears the regulator may have similar concerns about TMDs for certain insurance products.
- DDO enforcement is included in the list of ASIC's [top priorities for 2023](#). These latest interim stop orders bring the total number issued to date to 80.

[Source: ASIC media release 29/06/2023]

DDO review | ASIC has called on banks to prioritise migrating eligible Indigenous customers into low fee accounts following review

- An Australian Securities and Investments Commission (ASIC) [review](#) has identified that 'many' Indigenous consumers who are eligible for a low fee 'basic' bank accounts continue to be high fee accounts. The review also found that despite banks being aware of the issue, bank processes for transferring these customers into low fee accounts are 'overwhelmingly ineffective'. For example, ASIC found that the majority of banks had 'migration rates as low as between 0.5% to 3%'.
- In light of these findings, ASIC has written to banks, calling on them to:
 - 'ensure that fees are removed for new and existing customers, when products are altered and fee structures changed to remove particular fees,
 - 'review and improve TMDs [target market determinations] and account opening procedures in line with Design and Distribution Obligations to prevent future harm of this type to all prospective customers,
 - remediate impacted customers, and
 - make procedural changes to tailored Indigenous services to better meet their commitments to their Indigenous customers'.

ASIC Commissioner Danielle Press has flagged that ASIC intends to continue to monitor banks' response to the issues flagged. ASIC will 'prepare a report' on the project 'later in 2023.

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

Debanking: Government backs voluntary monitoring scheme, implementation of 'transparency and fairness measures' recommended by CFR

- In response to the [government's direction](#), the Council of Financial Regulators (CFR) delivered four policy recommendations to address the issue of debanking to the government in June 2022. On 28 June 2023, the government released its [formal response](#), broadly endorsing the recommendations (one was agreed, two were 'supported' and one was 'noted').
- For clarity, 'debanking' refers to the situation where a bank 'declines to provide banking services [to a new customer] or withdraws banking services from an existing customer'

Steps planned to be implemented to address debanking

- **Voluntary monitoring scheme on the way:** The government agreed with the recommendation that the big four banks undertake a voluntary data collection on debanking. The government has indicated it will work with APRA and the banks to 'design and scope the voluntary data collection to ensure the data collected is useful and the process is iterative'. The CFR further recommended that that following the voluntary data collection 'consideration'

should be given to the introduction of a 'formal phase of data collection'. The government's response does not address this aspect of the recommendation.

- **'Transparency and fairness' measures:** The CFR put forward the following five suggested measures for banks to implement to improve customer experience in this context. Namely that banks:
 - document their reasons for debanking
 - provide the customer with reasons for being debanked
 - ensure debanked customers who are individuals or small businesses have access to their internal dispute resolution procedures
 - provide a minimum of 30 days' notice before closing existing core banking services to a customer (and inform the customer that they may access the bank's IDR procedures)
 - self-certify their adherence to these measures.The government has indicated its 'support' for implementation of these measures stating that it will work with AUSTRAC to ensure they are implemented 'to the greatest extent possible'
- **Banks encouraged to provide guidance to DCE, FinTech and remittance sectors:** The government expressed 'support' for the CFR's recommendation that the four major banks 'be advised of the government's expectations that they publish guidance' for digital currency exchanges (DCE), FinTech and remittance sectors outlining their risk tolerance and other requirements. The government added that it expects banks to 'clearly and proactively' communicate their requirements to existing and new customers.
- **Government-funded education and guidance to FinTech, DCE and remittance sectors:** The government 'noted' the CFR's recommendation to consider (government) funded 'education, outreach and guidance' for the FinTech, DCE and remittance sectors' to drive 'capability uplift', stating that it supports the objectives of the recommendation and the 'potential that capability uplift may have'. The response also points to a number of other measures already in place/planned to be in place to address these objectives eg AUSTRAC's ongoing education and compliance campaigns and other planned initiatives (licensing regime for these entities). The government's response does indicate that consideration will be given to funding 'education, outreach and guidance' to these sectors as part of future initiatives in the AML/CTF context.

[Announcing](#) the release of the government's response, Treasurer Jim Chalmers said that the government intends to 'work closely' with stakeholders (banks, regulators and 'affected customers' eg FinTech, DCEs and remittance sectors) to ensure the recommendations are implemented 'effectively'.

In a [short statement](#) highly critical of the government's debanking response, Liberal Senator Andrew Bragg opined that 'regulating digital assets is the best way to stop de-banking' and urged the government to take action as quickly as possible

[Source: Government response to Potential Policy Responses to De-banking in Australia 28/06/2023]

A 'clear message' to industry: APRA hands down \$247,500 fine for failure to report data by the required deadline

- The Australian Prudential Regulation Authority (APRA) has [fined](#) a bank \$247,500 over its failure to report data by the required deadline. Specifically, the bank was 32 days late in filing statistical reports for the month ending 28 February 2023 under the Economic and Financial Statistics program.
- Announcing this action, APRA Member Therese McCarthy Hockey said that 'by issuing the fine, APRA wanted to send a clear message to industry of the importance of submitting data on time'.

[Source: APRA media release 04/07/2023]

Time to tighten bank regulation and supervision says US Federal Reserve Chair

In his [29 June 2023 speech](#) at the Banco de Espana Fourth Conference on Financial Stability, US Federal Reserve Chair Jerome Powell opined that despite the success of 'global efforts to boost resilience in the financial sector' over the past decade, he considers that 'residual vulnerabilities' remain which require additional supervision/a shift in regulatory approach.

Reflecting briefly on recent the collapse of Silicon Valley Bank (SVB) (and others) Mr Powell offered the following three 'observations'.

- Mr Powell suggested that the spate of recent bank collapses suggest a need to strengthen supervision and regulation of institutions the size of SVB given that the current approach (which is focused on vulnerability to credit

risk) proved insufficient to surface other potential sources of significant risk in these instances. In the case of SVB, Mr Powell observed that the bank's 'excessive interest rate risk exposure and a business model that was vulnerable in ways its management did not fully appreciate, including a heavy reliance on uninsured deposits' was missed by regulators.

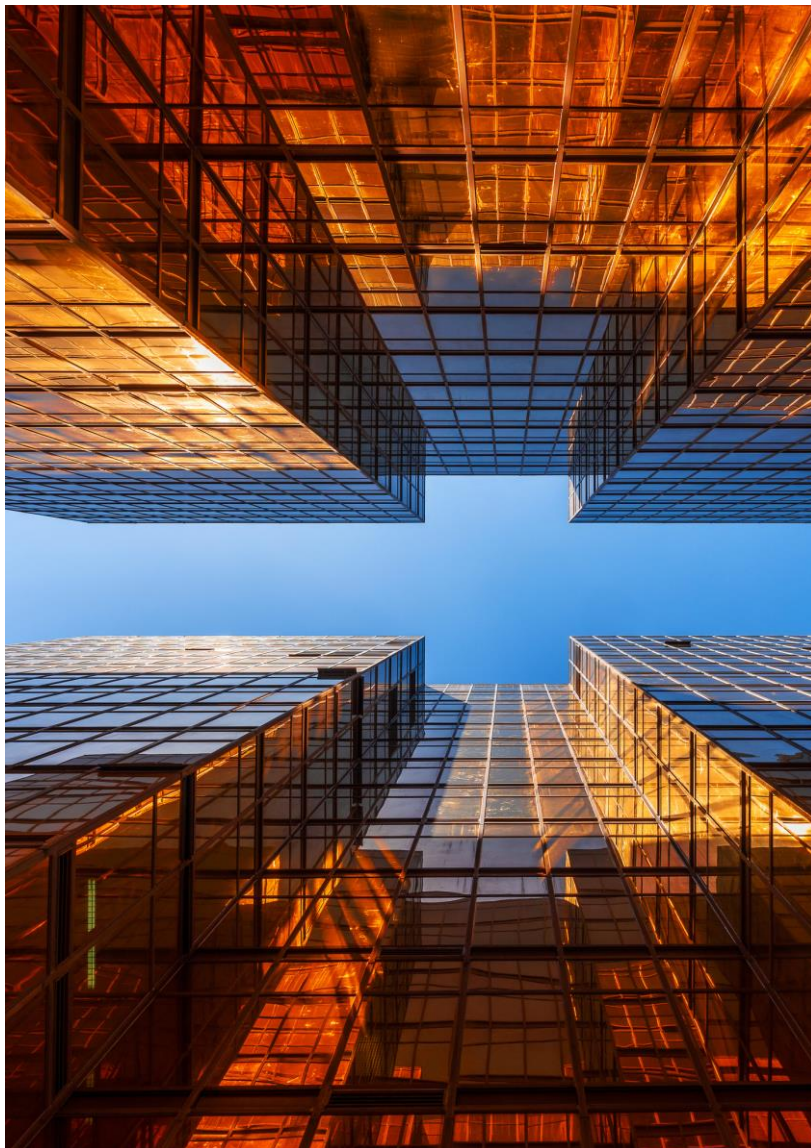
- Mr Powell also flagged a need for regulators to accelerate their response times. Mr Powell observed:

'When SVB failed it was clear that a number of standard assumptions, even though they were informed by hard experience, were wrong. Notably, bank runs were no longer a matter of days or weeks—they could now be nearly instantaneous'.

- Finally, Mr Powell said that recent bank collapses have demonstrated 'the value of having the very largest banks be highly resilient', noting that 'the events of the past couple of months would have been much more difficult to manage had the largest banks been undercapitalised or illiquid'.

Commenting more broadly on the 'bank runs and failures in 2023', Mr Powell underlined the importance of continued regulatory focus (in the US and more broadly) on maintaining the resilience of the global financial system, noting that in light of its interconnected nature, international collaboration and cooperation is essential.

[Source: US Federal Reserve Chair Jerome Powell speech, Financial Stability and Economic Developments, 29/06/2023]



In Brief | The Federal Court has imposed combined penalties of \$13.5 million on three insurers for engaging in unconscionable conduct when selling life, funeral and accidental injury insurance over the phone to vulnerable customers. The court also imposed a penalty of \$100,000 and a five year ban on the former managing and sole director of one insurer for breach of their directors' duties

[Sources: ASIC media releases 11/07/2022; 04/07/2023; Australian Securities and Investments Commission v Select AFSL Pty Ltd (No 2) [2022] FCA 786; Australian Securities and Investments Commission v Select AFSL Pty Ltd (No 3) [2023] FCA 723]

In Brief | The Life Insurance Code of Conduct which includes a range of additional consumer protections and gives the Life Code Compliance Committee increased powers to impose sanctions and financial penalties on Code subscribers took effect on 1 July 2023

[Sources: FSC media release 30/06/2023; CALI media release 30/06/2023]

Risk Management

Top Story | MinterEllison's submission on proposed reforms to AML/CTF regime

MinterEllison has made a submission to the Attorney-General's Department on its proposals to reform the AML/CTF regime. Broadly, MinterEllison supports the thrust of the proposed changes in the Government's Consultation Paper and strongly endorses the need for a risk-based approach to the regime.

You can find the full text of the submission on our website [here](#).

Top Story | First anti-scam centre 'hit squad' to target online investment scams

Government and regulatory focus on combatting online scams is continuing with the launch of the National Anti-Scam Centre on 1 July and the announcement of plans to convene the first 'time-limited expert taskforce' to target online investment scams.

Key Takeouts

- The 2023-24 Federal Budget ear-marked **\$86.5 million** over three years to combat scam activity and online fraud, including \$58 million in funding for the ACCC to move forward with establishing the National Anti-Scam Centre (NASC).
- The new NASC, which officially launched on 1 July 2023, is tasked with coordinating scam disruption/prevention activity across industry sectors, government and digital platforms. A key element of the NASC's approach is the (planned) creation of a series of time-limited taskforces (also referred to as 'fusion cells') drawing on public and private expertise, which will coordinate targeted action on specific scam categories.
- The NASC has announced that the first of these 'fusion cells' will focus on online investment scams.
- Separately, the Assistant Treasurer has flagged plans to roll out industry Codes of Practice this year for banks and financial institutions, telecommunications companies and digital platforms to push industry lift standards

Combatting scams a key priority for regulators and government

According to the Australian Competition and Consumer Commission (ACCC) losses to scam activity **topped \$3.1 billion in 2022**, a record high, with people experiencing vulnerability also suffering record financial losses. The report also flags that the recent spate of cyber incidents has only increased people's vulnerability to scams.

In light of this, it is perhaps unsurprising that both the ACCC and the Australian Securities and Investments Commission (ASIC) have stepped up their focus on the issue, with ASIC including 'combating and disrupting investment scams' [the **highest loss category identified in the ACCC's report**] as a **key enforcement priority for 2023**, and the ACCC likewise identifying scam detection and disruption as a **key priority**.

Enforcing e-marketing unsubscribe rules and combatting SMS scams is also **included** among the Australian Communications and Media Authority's top priorities in 2023-24.

As flagged above, the issue is also a focus for government, with the latest Federal Budget including significant funding to address the issue, including funding to establish the new National Anti-Scam Centre (NASC) within the ACCC.

About the NASC

For context, the Assistant Treasurer has previously **described** the new NASC as:

'the government's primary weapon to detect, disrupt and deter scammers and tackle online fraud'.

Broadly, Mr Jones **said** that the new NASC, is expected to do three things:

- 'use cutting-edge technology to share intelligence across Government and with authorised industry participants to interrupt scams in real time;
- combine the expertise of Government and the private sector to disrupt scams [through the planned establishment of a series of time-limited expert taskforces or 'fusion cells'] and;
- raise consumer awareness on the risk of scams and how to avoid them'.

In its first year of activity, it's [envisioned that](#) the NASC will work closely with ASIC in delivery of its scam website takedown service as well as support the Australian Communications and Media Authority (ACMA) in combatting telecommunications scams.

Coordinating anti-scam efforts across industry sectors, digital platforms and government is also identified as a key focus.

First 'fusion cell' to target investment scams

Assistant Treasurer Stephen Jones [describes](#) a 'fusion cell' as:

'an expert taskforce from across government, law enforcement, and the private sector who will utilise their expertise and intelligence to disrupt a specific scam'.

As flagged, across all scam categories, investment scams have been identified by the ACCC as causing the highest losses to consumers. For this reason, targeting this category of scam has been chosen as the first target of the first 'fusion cell'.

Specifically, the investment scams taskforce has been tasked with [focussing on](#):

- 'Early intervention to disrupt investment scams including stopping scammers from reaching potential victims
- Removing investment scam websites from the internet
- Sharing information about investment scam activity to assist the private sector to take disruption action
- Providing information to the public so they can avoid investment scams
- Identifying intelligence to refer to law enforcement in Australia and overseas'.

This 'fusion cell' will be led by ASIC and the ACCC and is also planned to include 'representatives from banks, telecommunications companies and digital platforms'. Exactly how large the taskforce is/who will participate has not been confirmed – the regulators have indicated that membership is intentionally variable and flexible. ACCC Chair Catriona Lowe has [said](#) that that the taskforce will include:

'exactly no more and no less than the experts we need around the table to solve the problem. It will vary depending on the nature of the intervention that we're undertaking... so we'll have an initial grouping, but we will be open to adding expertise that are going to help us target the problem. We've got an open mind about how we solve this problem. That's the nature of a fusion cell – it will be agile, depending on what we identify as the best techniques to interrupt the scams.'

The investment scams fusion cell is planned to be in place initially for six months and is expected to report publicly on outcomes through the NASC.

Other planned measures: New Industry Codes of Practice

The Assistant Treasurer also flagged plans to introduce 'over the next few months' new industry Codes of Practice for 'banks and other financial institutions', telecommunications companies and social media platforms to push industry to lift standards.

Mr Jones [stated](#):

'We're going to lift the bar to ensure that there are new obligations upon banks and other finance institutions to ensure that they are doing their bit to help Australians – households and small businesses – take the fight up to scammers. New obligations to ensure that there's a higher standard across our banks, higher standards in our telecommunications companies and higher standards with social media platforms as well'.

The banking sector is also taking steps

As [flagged previously](#), following the release of a report from ASIC ([REP 761](#), [summarised](#)) into the big four banks' approach to scam activity the banking sector is taking some steps to respond.

The Australian Banking Association (ABA) recently [announced](#) the launch of a new digital platform – the Fraud Reporting Exchange platform (FRX platform) – which aims to:

'enable faster and more targeted communication to help banks stop and recover as much money as possible when customers have paid scammers'.

Responding directly to the announcement of the new investment scams 'fusion cell' the ABA has [welcomed](#) the 'strong cross industry representation' in the first fusion cell observing that cooperation between industry and government and between industry sectors is 'essential' in disrupting what are increasingly sophisticated and complex scams.

ASIC has reiterated its call for banks to improve their approach

A key message running through REP 761 is that ASIC considers banks 'can and should do more to protect Australians from the financial loss of scams', including improving their approach to scam detection and response. ASIC's REP 761 found that 'banks are detecting and stopping a low proportion of scam payments [the report put its at 13%]' with most consumers not recovering their funds.

ASIC's report also flagged that the regulator has commenced a review of the scam prevention, detection and response activities in other parts of the banking industry (that is, beyond the big four banks) and ASIC's intention to monitor the actions being taken by the big four banks in response to the issues identified in the report.

Appearing at the [joint press conference](#) to announce the new investment scam taskforce, ASIC Commissioner Danielle Press reiterated ASIC's previous calls for banks to 'do better, to improve their approaches and to deal with scams'. Commissioner Press also took the opportunity to call on the private sector more broadly to cooperate in addressing the issue, underlining that ASIC considers combatting scam activity to be 'a critical task for all of corporate Australia, including financial institutions, technology companies, digital platforms and other organisations'.

[Sources: ACCC media release 03/07/2023; ASIC media release 03/07/2023; Assistant Treasurer Stephen Jones media release 03/07/2023]

CPS 234 compliance | APRA calls on all regulated entities to address six 'common control gaps' following recent cyber attacks

- Following what is considered by the regulator to be a successful pilot, the Australian Prudential Regulation Authority (APRA) is currently rolling out what it describes as an 'independent tripartite cyber assessment' of APRA-regulated entities. The exercise is being conducted in four stages and entails entities appointing an independent auditor to assess their compliance with prudential standard [CPS 234 Information Security](#) (CPS 234).
- APRA has [released the findings](#) from the 'first tranche' of assessments completed (the first tranche included approximately 24% of APRA-regulated entities).
- The key message to industry is that APRA considers there is a need to 'need to raise the bar', especially in light of the spate of recent cyber incidents. More specifically, APRA has identified six 'common control gaps' it considers urgent for industry to address. The table below provides a brief summary of these six issues, together with APRA's suggested actions/expectations around each.

SIX GAPS IDENTIFIED	ACTIONS TO ADDRESS THE GAPS IDENTIFIED
<p>1. 'Incomplete identification and classification for critical and sensitive information assets'.</p> <p>APRA observes that:</p> <p>'Without proper identification and classification, it can be difficult for entities to determine the appropriate information security controls to protect critical and sensitive data from unauthorised access or disclosure'.</p> <p>APRA cites three examples of 'common gaps' in this context. Namely that:</p> <ul style="list-style-type: none">'information asset classification policies and methodologies are not fully established and do not clearly define the criteria of what assets should be considered critical and/or sensitive;information in asset registers is not reviewed and updated regularly by asset owners, as required by entities' own policies, leading to incomplete and inaccurate information; and	<p>In responding to this issue, APRA suggests that entities consider:</p> <ul style="list-style-type: none">'the potential impact of a security compromise on the asset when defining asset classification policies and criteria''utilising an information asset inventory repository such as a configuration management database (CMDB) to facilitate asset registration and mapping of interrelationships''ensuring the information asset inherits the highest criticality and sensitivity ratings of its constituent components'.

SIX GAPS IDENTIFIED	ACTIONS TO ADDRESS THE GAPS IDENTIFIED
<ul style="list-style-type: none"> – information assets managed by third parties are not fully identified and classified and, in some cases, not identified at all'. 	
<p>2. Information security controls of third parties</p> <p>APRA observes that</p> <p>'achieving sufficient assurance of information security controls operated by third-party service providers is a common challenge' especially in light of the increasing reliance being placed on service providers to manage 'critical systems'.</p> <p>Some of the examples of 'common gaps' observed include that control design and operating effectiveness is 'often based on third party's self-assessment only' without any additional verification.</p>	<p>APRA considers that addressing these issues would 'typically' involve entities taking the following steps:</p> <ul style="list-style-type: none"> ▪ identifying which information assets are managed by third parties, the controls that third parties have in place ▪ determining the level of rigour required in testing ▪ 'testing third party control effectiveness through a combination of interviews, surveys, control testing, certifications, contractual reviews, attestations, referrals and independent assurance assessments' ▪ 'ensuring any capability gaps identified are addressed in a timely manner'.
<p>3. Control testing programs</p> <p>APRA observed that</p> <p>'in many cases, the testing programs of entities are incomplete, inconsistent, lack independence and do not provide adequate assurance for management and the Board'.</p> <p>Two of the 'common' issues identified in this context are: a) 'the nature and frequency of the testing is often not commensurate with the criticality and sensitivity of information assets'; and b) 'testing is not performed by functionally independent testers'.</p>	<ul style="list-style-type: none"> ▪ To address these issues, APRA considers that entities should: <ul style="list-style-type: none"> – 'adopt a variety of testing approaches (see Appendix G of CPG 234), – define clear success criteria (including when re-testing is required); and – conduct testing by appropriately skilled and functionally independent specialists who do not have operational responsibility for the controls being validated'.
<p>4. Incident Response Plans</p> <p>APRA found that 'information security incident response plans were found to be incomplete, lack regular testing and review'.</p>	<ul style="list-style-type: none"> ▪ APRA states that: <p>'entities must ensure their incident response plans (including those operated by third parties) are tested at least annually to ensure they remain fit-for-purpose'.</p> ▪ APRA adds that these plans should both: a) 'cover a broad range of plausible disruption scenarios eg data breach, malware infection, denial of service attacks etc; and b) include 'sufficient details to help minimise the amount of decision-making required and provide clarity regarding roles and responsibilities during an information security incident'.
<p>5. Internal audit reviews of information security controls</p> <p>APRA found that internal audit assessment of third party information security controls is 'limited across the industry'.</p>	<p>To address this issue, APRA considers entities internal audit teams should:</p> <ul style="list-style-type: none"> – 'target audit areas where the impact of an information security compromise is material and the ability to place reliance on other control testing undertaken is low; – review the scope and quality of the testing conducted by other areas and third parties to determine how much reliance can be placed upon it; and

SIX GAPS IDENTIFIED	ACTIONS TO ADDRESS THE GAPS IDENTIFIED
	<ul style="list-style-type: none"> – report any material deficiencies identified or the absence of any assurance to the board'.
<p>6. Notification (to APRA) of material incidents and control weaknesses</p> <p>APRA found that the processes used to identify material incidents and control weaknesses for reporting to APRA are 'often inconsistent, unclear and in some cases, not in place at all'.</p>	<ul style="list-style-type: none"> ▪ Noting that entities are required to identify and report this information to APRA, APRA considers entities should ensure: <ul style="list-style-type: none"> – they have in place 'clear governance processes for escalating incidents and control weaknesses to relevant governance bodies and notify APRA in a timely manner' – they utilise 'various mechanisms to identify material control weaknesses, including control testing, assurance activities, information security incidents, vulnerability notification by software and hardware vendors, and other forms of notification by third parties and related parties'.

APRA has called on all entities to prioritise addressing the weaknesses identified

APRA has called on all entities to review the weaknesses highlighted above and CPS 234 to 'address shortfalls in their cyber security controls and governance policies'. APRA states that:

'Where gaps are identified and breach reporting is undertaken, APRA intensifies its supervisory oversight...to ensure entities remediate cyber resilience deficiencies and meet their CPS 234 obligations'.

[Source: APRA article: Cyber security stocktake exposes gaps 05/07/2023]

NSW parliamentary inquiry into AI launched

A [new parliamentary inquiry](#) is set to inquire into and report on 'the current and future extent, nature and impact of AI in NSW'. The terms of reference make clear that the inquiry is expected to consider a very wide range of issues including:

- 'the social, economic and technical opportunities, risks and challenges presented by AI to the New South Wales community, government, economy and environment'
- the current and potential impact of AI on the labour market including potential changes in:
 - 'earnings
 - job security
 - employment type
 - employment status
 - working patterns
 - skills and capabilities for the current and future workforce
 - the current and future extent, nature and impact of AI on social inclusion, equity, accessibility, cohesion and the disadvantaged
 - the current and future extent, nature and impact of AI on customer service and frontline service delivery in New South Wales'
- 'whether current laws regarding AI in New South Wales that regulate privacy, data security, surveillance, anti-discrimination, consumer, intellectual property and workplace protections, amongst others are fit for purpose'

The due date for submissions is 20 October 2023.

The inquiry is being chaired by Chair of the Premier and Finance Committee (and Legalise Cannabis Party member) Jeremy Buckingham.

[Sources: Portfolio No 1 Committee: Artificial intelligence (AI) in New South Wales; media release 28/06/2023]

In Brief | Australian Communications and Media Authority joins other regulators in prioritising scam disruption/prevention: Enforcing e-marketing unsubscribe rules and combatting SMS scams listed among ACMA's top priorities in 2023-24

[Source: ACMA media release 30/06/2023]

Other News

Top Story | A 'thin new world' part 2 – proposed changes to Australia's thin capitalisation provisions

On 22 June 2023, the government introduced [Treasury Laws Amendment \(Making Multinationals Pay Their Fair Share – Integrity and Transparency\) Bill 2023](#) (Bill) into Parliament. The main amendments introduced relate to the thin capitalisation rules in Division 820 of the Income Tax Assessment Act 1997 (Cth) (ITAA97).

If legislated in its current form, the Bill would limit the amount of interest expenses that entities can deduct for tax purposes from 1 July 2023.

MinterEllison has released an article breaking down the key changes, highlighting how the Bill differs from the exposure draft and suggesting some practical steps to take in response. You can access the full text of the article on our website here: [A 'thin new world' part 2 – proposed changes to Australia's thin capitalisation provisions - Technical update - MinterEllison](#)

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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