

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

# Governance News

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

29 November 2023

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# Boards and Directors

## Data governance | APRA calls on boards to prioritise addressing data risk management gaps

To gain insights into the status of data risk management, APRA launched a multi-year pilot exercise- the 100 Critical Risk Data Elements (CRDE) Pilot -with a selection of banks in 2019.

The exercise involved the participating banks identifying 100 of their most critical data elements (eg customer name, account number and interest rate). APRA then tracked their efforts to 'enhanc[e] the control environment over those data elements' through subsequent data risk prudential reviews assessing the implementation of each banks' data risk management framework.

APRA has now released [an article](#) highlighting insights from the exercise.

### Three key messages

The three key messages from APRA are:

- though data practices were observed to have improved over time – APRA highlights a number of examples of 'better practices' - 'progress is slow and the gap between current and better practice in data management remains wide'.
- APRA expects boards to prioritise data management as part of its broader operational risk focus (and to prioritise addressing the issues identified in the article). APRA observes that:
  - 'data management must be an ongoing area of focus and monitoring for boards, management, and business'.
- APRA intends to maintain its focus on this issue through its new cross-industry prudential standard CPS 230 Operational Risk Management (which is set to apply from 1 July 2025). For more on CPS 230 see: [APRA's new](#)



## Some of the key data management issues identified

Key issues highlighted by APRA include:

- 'data practices aren't consistently integrated into business-as-usual activities and are often being performed as an additional exercise, impacting efficiency;
- entities haven't consistently made the connection between enhancing data practices and better decision-making;
- entities are struggling to quantify data inaccuracies across key reports, models, and scenarios, resulting in limited risk reduction; and
- improvements in data practices aren't considering the full requirements of business end-users and solutions aren't always fit for purpose, resulting in reduced ability to enhance the quality of reporting provided to senior leadership'.

## Six 'factors' to consider in uplifting data governance

APRA identifies the following as factors businesses should 'consider' in the context of improving their overall data management practices:

- 'Establish data governance with a unified data strategy.
- Provide clarity on roles and responsibilities for ownership of critical data elements and processes across the data lifecycle.
- Simplify the technology and data architecture environment through improved platform solutions and by decommissioning legacy assets.
- Identify critical data elements and create a consistent set of data controls.
- Establish mechanisms to monitor data quality and timely remediation of errors based on business requirements.
- Integrate data management risk into risk management frameworks'.

As flagged above, the article also highlights a number of examples of better practices observed through the pilot exercise.

## Looking ahead

APRA would like to entities focus on:

'identifying critical data elements, remediating data issues, enhancing technology platforms, simplifying legacy architecture, and making data more accessible. In fact, it's in the best interest of entities to streamline processes, increase automation of manual controls, and improve data quality. Because in a world where demand for data from customers, clients, and regulators is only increasing, entities can't afford to be left behind'.

As flagged, APRA intends to maintain its focus on data risk management through CPS 230.

[Source: APRA media release 27/11/2023]

## Data governance | New report highlights a lack of confidence in boards' understanding of current data governance challenges

### Key takeaways from the Governance Institute of Australia report: Data Governance in Australia

The Governance Institute of Australia has released a report - [Data Governance in Australia](#) – into how organisations are approaching data governance. The report is based on the findings of an online survey of Governance Institute members. The report also includes insights from an expert panel.

### Headline findings

#### Lack of confidence in boards' understanding of data governance challenges:

- The report highlights that 58% of survey respondents consider their board does not have an understanding of the organisation's current data governance challenges (though 61% consider their board understands their organisation's most important data assets and how these are protected).

- Respondents attribute this lack of understanding at board level in the main to lack of formal technology skills and education (51%) or data governance not being prioritised at board level (39%)
- Interestingly, the report also highlights that most (50%) respondents see responsibility for data governance as resting with the CEO/senior management rather than with the board (< 30%)

### **Lack of reporting to the board on data governance**

According to the report:

- 51% of respondents report that data governance is not being reported to the board
- 78% of respondents indicated that they only report to the full board on a quarterly or less frequent basis on data governance. Within this group 20% only report annually.

The report observes that:

'Concerns have been raised in the mainstream media and scholarly literature as to the lack of board oversight of data-related decisions. There is concern that important data related matters are routinely made by technical experts with limited understanding of relevant laws and principles of accountability and transparency. On the whole, the findings of this survey justify this concern'.

### **Lack of data governance frameworks**

According to the report:

- Less than half of respondents (46%) report that their organisation has a data governance frameworks, with lack of capacity the primary reason given for this – 64% of respondents gave this as the reason.
- A third of organisations don't have data governance on the risk register.

### **Four recommendations to help strengthen data governance practices**

The report includes the following four recommendations to assist organisations to strengthen their data governance practices:

- Provide more education/training to members of the organisation including senior leaders on: a) 'identifying the various data assets of the organisation'; b) 'quantifying the value of data assets held by the organisation'; and c) 'identifying the level of risk associated with each such data asset'
- Develop guidelines for designing, implementing and maintaining an effective data governance framework
- Develop guidelines for implementing and maintaining an effective data governance framework
- Monitoring and measuring the success of the data governance framework

The report also includes [a table at p21 of the report](#) setting out a non-exhaustive list of potential questions to assist organisations in assessing their level of capability in this context.

### **About the survey**

The report findings are based on an online survey of 345 Governance Institute members carried out in August 2023.

Most survey respondents self-identified as either 'Senior governance or risk' or 'CEO or C-suite executive'. The majority of respondents were from not-for-profit organisations (36%) or government (21%) organisations. 18% of respondents were from small to medium commercial enterprises and 10% were from ASX listed companies.

[Sources: Governance Institute of Australia media release 22/11/2023; Full text report: Data Governance In Australia]

# Diversity

## (Some) progress: Australia's gender pay gap has narrowed to 21.7%

The Workplace Gender Equality Agency's (WGEA) has released its latest annual update on the state of workplace gender equality in Australia. Here are our key takeaways.

### The gender pay gap has narrowed slightly...

- The WGEA found that the average total remuneration gender pay gap has dropped to 21.7% in 2023 (down 1.1% from 22.8% in 2022). This means that on average, for every \$1 men earn in Australia, women earn 78 cents.
- the WGEA attributes this in chief to an increase in the proportion of women in higher paying roles including management roles – according to the WGEA, the proportion of women managers is now 42% (up from 41% last year).
- Commenting on this WGEA CEO Mary Wooldridge said this 'signals that employers are increasingly prioritising gender equality as a core business measure and taking action to tackle workforce composition at manager level'. However, Ms Wooldridge also flagged that barriers remain for women to move into managerial roles, including for example that almost all of these roles are full-time positions. According to the WGEA only 7% of management roles are part-time and the majority of women (57%) are employed casually or on a part time basis.

### Further insights

The table below provides a snapshot of some of the other key insights from the report.

ISSUE	WGEA FINDINGS
<b>The WGEA considers that 'strong progress' has been made in the three following areas.</b>	
Access to flexible work	<ul style="list-style-type: none"><li>▪ WGEA found that 84% of employers have a flexible work policy and over 50% of employers also 'hold leaders to account for improving flexibility'</li></ul>
Access to paid parental leave	<ul style="list-style-type: none"><li>▪ 63% of employers offer some form of employer-funded paid parental leave.</li><li>▪ Of this group, 33% offer it equally to women and men without using labels that define a carer's role in the family unit as 'primary' or 'secondary'</li><li>▪ 86% employers pay superannuation on parental leave</li></ul>
Workforce composition	<ul style="list-style-type: none"><li>▪ 50% of employees work in an industry dominated by one gender (the lowest proportion recorded)</li></ul>
<b>The WGEA considers that improvements were more 'marginal' in the following areas</b>	
Gender pay gap analysis:	<ul style="list-style-type: none"><li>▪ 70% employers have a policy or strategy to achieve equal remuneration</li><li>▪ However, only 55% conducted an analysis to understand the drivers behind their gender pay gaps and of this group, only 60% acted on the results</li></ul>
Uptake of parental leave:	<ul style="list-style-type: none"><li>▪ Women still account for the majority of primary carer's leave taken and men account for the majority of secondary carer's leave taken.</li><li>▪ 14% of all paid primary carer's leave was taken by men (which is a 0.6% increase)</li></ul>
Empowering a workplace culture that promotes flexible work:	<ul style="list-style-type: none"><li>▪ While most employers now have a flexible work policy, less than half (43%) provide specific training to managers on flexible work and just 35% provide team training</li></ul>
<b>WGEA considers 'attention is required' in the following areas</b>	
Board representation	<ul style="list-style-type: none"><li>▪ WGEA found there was no change in the representation of women on boards – women hold 34% of board seats (consistent with the previous year)</li><li>▪ 19% of board Chairs are women</li></ul>

ISSUE	WGEA FINDINGS
	<ul style="list-style-type: none"> <li>26% of boards include zero women</li> </ul>
Part-time manager positions	<ul style="list-style-type: none"> <li>The majority of women (57%) are employed casually or on a part time basis. However, only 7% of manager roles are part time roles.</li> </ul>
Industry segregation:	<ul style="list-style-type: none"> <li>Interestingly, organisations in female-dominated industries are significantly less likely – three times less likely – than organisations in male-dominated sectors to analyse their payroll for gender pay gaps and act on the results.</li> </ul>
Consultation with employees	<ul style="list-style-type: none"> <li>Only a third of employers have a formal policy or strategy for consulting with their employees on gender equality (though almost half (47%) of employers reported they consult employees on gender equality.</li> </ul>

### More specific insights

The WGEA has made available insights at industry level as well as some information at organisations level (noting that organisations' gender pay gaps and gender composition by pay quartile information will be published in 2024).

You can access this information here: [WGEA Data Explorer | WGEA](#)

### WGEA has called on organisations to focus on addressing the drivers of gender inequality to accelerate progress

[Commenting](#) on the results overall, WGEA Chief Executive Officer Mary Wooldridge said the results show that while the pace continues to be slow, 'there is momentum for change in Australian workplaces' driven by increased discussion/debate around gender equality, the tight labour market and 'impending legislative reform'.

While welcoming the progress being made, Ms Wooldridge called on organisations to sharpen their focus on addressing the drivers of gender inequality – including utilising the data published by the WGEA to help benchmark their approach. Ms Wooldridge [commented](#):

'If we want real change, we need employers to take bold action. We need employers to look across the drivers of gender inequality and be imaginative in their solutions. Publishing gender pay gaps requires employers to understand their unique challenges, develop a purpose-built approach to gender equality and then take intentional and sustained action. This Scorecard is a starting point for employers to assess their performance on the national scale and relative to their industry peers and identify where there is room for improvement.'

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





# Disclosure and Reporting

## New report highlights trends in climate disclosure by ASX listed companies

### Joint AASB AUASB report suggests significant uplift is needed in order for companies to meet proposed new mandatory climate disclosure and assurance requirements

Ahead of the planned phased introduction of new ISSB-aligned, mandatory climate disclosure requirements in Australia from next year (read: [Introduction of mandatory climate reporting in Australia: Second round of consultation launched - Technical update - MinterEllison](#); and [Another step closer towards implementing mandatory climate disclosure in Australia - Post - MinterEllison](#)), the Australian Accounting Standards Board (AASB) and the Auditing and Assurance Standards Board (AUASB) have released a [joint report](#) tracking trends in climate-related disclosures and associated assurance practices in the Annual Reports of Australian listed entities over the 2018-2022 period.

Here are our key takeaways.

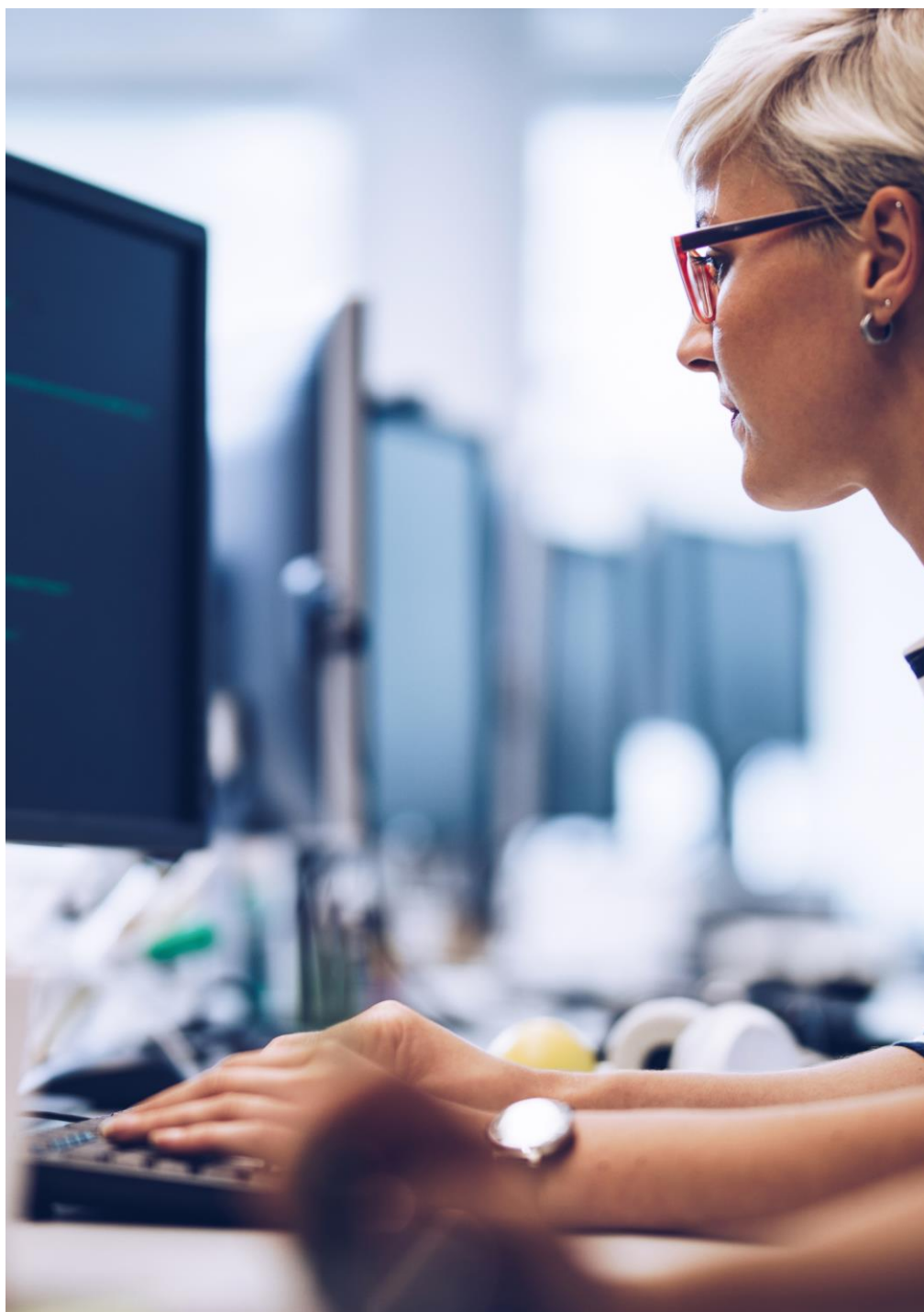
#### Continued improvement...

The report found that:

**More companies are disclosing:** 42.8% of ASX listed entities disclosed climate-related information in their 2022 annual reports (up from just 19% in 2019)

#### Reporting has increased across all industry sectors

- 80% of ASX-listed companies in the Utilities sector disclosed climate-related information in their 2022 annual reports, making this the sector with the highest proportion of disclosers
- The majority (over 60%) of ASX-listed companies in the Real Estate, Energy, Consumer Staples sectors disclosed climate-related information in their 2022 annual reports
- Over 40% of ASX-listed companies in the Materials, Consumer



Discretionary and Communication Services sectors disclosed climate-related information in their 2022 annual reports

- Less than 40% of companies in the Financial, IT and Health Care sectors disclosed climate-related information in their 2022 annual reports.

#### **Larger entities are leading the way on disclosure:**

- ASX 100 entities are most likely to disclose climate-related information in their Annual Reports (95.8% of this group), followed by ASX 101-300 (83.1% of this group) and ASX 301-500 (72.7% of this group)
- The largest entities are also the most likely to include climate-related information in their remuneration reports with 31.9% of ASX 100 doing so in 2022 decreasing to 16.8% for ASX 101-300 companies (up from 5.8% in 2021) and 3.4% for ASX 301-500 companies.
- The report suggests that:

'As the largest 300 ASX entities appear to be reaching close to a saturation point in disclosing climate-related information in the Annual Report, as the AASB considers mandating disclosures for all listed entities, it may be informative for them to examine why a small number of the largest ASX companies have decided to-date not to do so'.

#### **Alignment of disclosures with TCFD**

The report found that there has been a steady increase in the proportion of companies voluntarily adopting and aligning their disclosures with the TCFD recommendations (which is relevant as the ISSB standards on which the new Australian mandatory climate disclosure regime is proposed to be based, are themselves based on (though they go further than) the TCFD framework).



## Assurance

When it comes to assurance, the report highlights that very few entities are currently reporting in their annual reports at the level proposed in Treasury's assurance roadmap.

The report found that

'Limited assurance is still the dominant level of assurance being provided over climate-related information, with only three instances where both limited and reasonable assurance was provided'.

For context, [Treasury's assurance roadmap \(at p25 of Treasury's consultation paper\)](#) suggests that certain entities (Group 1 entities) would need to provide reasonable assurance for Scope 1 and 2 emissions and limited assurance of Scope 3 emissions, scenario analysis and transition plans 2026.

[Source: AASB-AUASB Joint Research Report: Trends in climate-related disclosures and assurance in the Annual Reports of ASX-listed entities November 2023]

## Further steps to support the planned introduction of mandatory climate disclosure in Australia

### Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Cth) receives Assent

- The Australian government plans to phase in new, internationally aligned, mandatory climate disclosure reporting requirements from July 2024 for certain entities. For more on the government's proposed approach see: [Introduction of mandatory climate reporting in Australia: Second round of consultation launched](#)
- The content of these new requirements will be set out in new Australian Sustainability Reporting Standards (ASRS) which are being developed by the Australian Accounting Standards Board (AASB).
- The AASB has released a package of three initial draft standards for consultation based on the ISSB standards: IFRS S1 and IFRS S2. The due date for submissions is **1 March 2024**. For more on the proposed AASB standards read: [Another step closer towards implementing mandatory climate disclosure in Australia - Post - MinterEllison](#)

### Assent given: Treasury Laws Amendment (2023 Measures No. 1) Bill 2023 (Cth)

[Treasury Laws Amendment \(2023 Measures No. 1\) Bill 2023 \(Cth\)](#) passed both Houses on 15 November 2023 and received Assent on 27 November 2023.

### What's interesting about the Bill?

The changes included in Schedule 2 to the Bill confirm the Australian Accounting Standards Board (AASB), Auditing and Assurance Standards Board (AUASB) and Financial Reporting Council (FRC) as the entities responsible for:

- formulating sustainability standards (AASB)
- developing auditing and assurance standards for sustainability purposes (AUASB)
- providing strategic oversight and governance functions in relation to the AASB's and the AUASB's sustainability standards functions (FRC)

The [explanatory memorandum](#) states that this changes are necessary because:

'The ASIC Act currently does not explicitly grant the AASB and the AUASB the function to develop and formulate sustainability standards and associated auditing and assurance standards. This is necessary to support the Government's commitment to ensure entities provide Australians and investors with greater transparency and accountability in relation to their climate-related plans, financial risks, and opportunities. The proposed sustainability standards would provide general guidance, assisting relevant industry to prepare systems and processes for eventual transition to mandatory climate-related financial disclosures. They would also be flexible enough to accommodate future global developments in other sustainability reporting'.

These changes are set to commence the day after the Bill receives Assent.

The Senate amendments ([summarised in the supplementary explanatory memorandum](#)) do not impact Schedule 2.

### Plans to consolidate the AASB, AUASB and the FRC announced

- The government [has announced plans](#) to consolidate the three bodies that currently oversee financial reporting and set reporting standards – the Australian Accounting Standards Board (AASB), the Auditing and Assurance Standards Board and the Financial Reporting Council - into a single entity.

- The aim of the planned change is to  
 'make them more efficient, effective and fit for purpose, including to assist Australia in implementing new climate and sustainability standards'.
- The government intends to consult on draft legislation to implement this planned reform. This will include consultation on 'appropriate transitional arrangements'.
- The government's announcement makes clear that ahead of the establishment of the proposed new body:  
 'the AASB will continue to progress its work in relation to climate-related financial disclosure standards. Establishing a framework for sustainability-related financial disclosures is a key priority in the Government's draft Sustainable Finance Strategy'.
- In terms of timing, it is envisioned that the body will be operational on or after 1 July 2026 (subject to the passage of the necessary legislation).

### CA ANZ raises concerns about lack of consultation on the planned amalgamation of the AASB, AUASB and FRC

Following this announcement, Chartered Accountants Australia and New Zealand (CA ANZ) has raised concerns about the lack of consultation on the decision.

CA ANZ is also concerned by the lack of detail around funding arrangements as well as the composition and structure of the planned new body – in particular, CA ANZ has underlined the importance of alignment to international accounting audit and sustainability standard setters.

CA ANZ's Group Executive Advocacy and International Development, Simon Grant commented:

'CA ANZ and many other stakeholders have urged the government to establish a focused sustainability standards board to have the right expertise and international alignment from the outset. Today's announcement is the largest reform to the accounting and audit standard setting bodies in decades and yet it was revealed via a speech in a public forum'.

[Sources: Treasury Laws Amendment (2023 Measures No. 1) Bill 2023; Joint media release: Treasurer Jim Chalmers and Assistant Treasurer and Minister for Financial Services Stephen Jones 21/11/2023; CA ANZ 22/11/2023]

### In Brief | Combatting greenwashing: The UK Financial Conduct Authority has released final sustainability disclosure and product labelling rules

[Sources: FCA media release 28/11/2023; PS23/16 Sustainability Disclosure Requirements (SDR) and investment labels]

# Meetings and Proxy Advisers

## 'Two strikes' rule: New analysis suggests a 'strike' is likely to hurt company value

Analysis from [the Reward Practice](#) into the impact of a 'strike' – a vote of 25% or more 'against' a company's remuneration report – on a company's share price suggests that a 'strike' is likely to negatively impact value.

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

Briefly, Reward Practice looked at ASX 300 companies that received a 'strike' over a seven year period (2016-2022) and found that:

- there was a greater than 50% chance of a drop in share price following a 'strike'
- where there was a share price drop, it was significant – 30% on average

The Reward Practice considers these findings confirm and reinforce findings in other studies – [here](#) and [here](#) – that negative votes could hurt company value.

[Source: The Reward Practice 20/09/2023]

## ASIC Chair points to the 'two strike' rule as an important means of enabling shareholders to hold boards to account on a range of issues (beyond pay)

In his [28 November 2023 address](#) to the Australasian Investor Relations Association Forum, Australian Securities and Investments Commission (ASIC) Chair Joe Longo touched on the important role that he considers shareholders play in ensuring companies adhere to a high standard of corporate governance – a role that Mr Longo said, complements ASIC's regulatory role in this context.

Mr Longo cited the 'two strike' rule as an example of this. Mr Longo commented:

'Obviously, ASIC has no formal role in relation to this vote, and the vote is non-binding and focused on remuneration. But, as everyone here will appreciate, it's used more widely for shareholders to let the company know their views about the company's performance. One might think of the 83% vote against the Qantas remuneration report as an example. This vote, and broader engagement by shareholders, can change companies.

Shareholders exercising their rights should sharpen the focus of every board'.

[Source: ASIC Chair Joe Longo address to the Australasian Investor Relations Association Forum 28/11/2023]

## 2023 AGM season | Recent string of 'strikes' continues

### Lovisa AGM

All management-proposed resolutions that went to a vote at the Lovisa Holdings Ltd 22 November 2023 AGM were carried with the exception of [Item 2 in the Notice](#) to approve the remuneration report - 73.43% of shareholders voted against the remuneration report, constituting a 'first strike'. This is the third consecutive year that 25% or more of shareholders have voted against the remuneration report.

[For context, the 'two strikes rule' means that boards face the prospect of being 'spilled' if 25% or more of shareholders vote against the resolution to approve the company's remuneration report at two consecutive AGMs – that is, if there are two consecutive 'strikes' (25% or more shareholders vote 'against' the remuneration report). However, if the company receives a 'strike' in the third consecutive year, the rule resets, and it is only counted as a 'first strike'. For more on the operation of the two strikes rule see: [Executive remuneration: a quick guide – Parliament of Australia \(aph.gov.au\)](#).]

The [AFR attributes](#) the vote result to the high level of investor concern over what shareholders perceive to be excessive CEO pay.

This appears to be borne out by the concerns cited by two investors for their decision to vote against the remuneration report:

- **Norges Bank Investment Management** (NBIM) said that it voted down the report because:

'The board is responsible for attracting the right CEO and setting appropriate remuneration. A substantial proportion of annual remuneration should be provided as shares that are locked in for five to ten years, regardless of resignation or retirement. The board should provide transparency on total remuneration to avoid unacceptable outcomes. The board should ensure that all benefits have a clear business rationale. Pensionable income should constitute a minor part of total remuneration'.



- **Legal and General Investment Management** (LGIM) was more specific in its reasons, stating:

'A vote against is applied as LGIM expect a sufficient proportion of the Long Term Incentive to be subject to performance conditions that are aligned to the company's long term strategy and measured over a period of at least 3 years. Remuneration - Shareholder alignment: A vote against is applied as the company does not have a shareholding guideline in place for executives. LGIM believes a shareholding requirement is a good way to align with long-term shareholder interests as executives are expected to maintain a proportion of earned shares at risk over the medium term. A vote AGAINST the remuneration report is warranted. Concerns are identified for the following: - The quantitative pay-for-performance analysis indicates a high concern for misalignment of pay, performance and shareholder outcomes. - There have been multiple years of excessive LTI grants for the CEO. - The has ceased to present the CEO LTI grant resolution for shareholder approval at

the 2022 and 2023 AGMs. - There have been strikes against the remuneration report at the 2021 and 2022 AGMs. - The board does not appear to have responded appropriately to shareholders concerns as observed in prior year strikes'.

A number of other investors also voted against the report – though they did not give any further detail around the reasons for their decision to do so. These include:

- [NYC pension funds](#)
- [California Public Employees Retirement System \(CalPERS\)](#)

## Lendlease AGM

Lendlease Group (Lendlease) shareholders delivered a first 'strike' on the company's remuneration report at the 17 November 2023 AGM with [39.81%](#) of shareholders voting 'against'.

All five directors standing for election were duly elected though there was a strong protest vote (over 10% against) two directors - [over 33%](#) of shareholder voted 'against' the re-election of directors Phillip Coffey (Chair of the Risk Committee and member of the Nomination and Sustainability Committees) and Elizabeth Proust (Chair of the People & Culture Committee and member of the Nomination, Risk and Sustainability Committees).

In his [address to shareholders](#), Lendlease Chair J Ullmer acknowledged 'the votes cast ahead of today's Meeting and the recommendations of some proxy advisers may result in a vote against our Financial Year 23 Remuneration Report' adding that the board 'recognise and respect our securityholders' feedback'. Mr Ullmer did not directly address the nature of these concerns, though he did express the boards' 'disappointment with the company's financial performance and our determination to improve returns to securityholders'.

The [AFR](#) suggests the vote result may be in response to the company's financial performance, and the pace of the company's turnaround plan.

Despite the 'strike' the remuneration report had the backing of a number of investors including:

- Norges Bank Investment Management (NBIM) which [voted in support](#) of all management proposals
- Legal and General Investment Management (LGIM) which [voted in support](#) of all management proposals
- California Public Employees Retirement System (CalPERS) voted [in support](#) of all management proposals
- California State Teachers Retirement System (CalSTRS) [voted in support](#) of all management proposals

Ahead of the meeting, the Australian Shareholders Association (ASA) also advised that it [intended to support](#) all management proposals.

## Broader context

The strikes at Lendlease and Lovisa are examples in a recent string of 'strikes' against ASX companies. For example

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

[Sources: Lovisa Holdings Ltd: Notice of Meeting; Results of meeting; Lendlease: Notice of Meeting; Results of Meeting]

## Regulators

### Maintaining market integrity: ASIC Chair flags three areas where the regulator considers investor relations professionals should increase 'transparency and engagement'

In his 28 November 2023 [address](#) to the Australasian Investor Relations Association (AIRA) Forum, Australian Securities and Investments Commission (ASIC) Chair Joe Longo spoke about the importance of transparency and engagement in maintaining strong investor relations – which he considers essential to maintaining market integrity - highlighting three areas where ASIC considers 'greater transparency and engagement are needed and useful', namely: continuous disclosure, sustainable finance and stakeholder responsibility and activism.

#### Continuous disclosure

- Mr Longo said that continuous disclosure is 'fundamental to maintaining market integrity' and underlined ASIC's continuing commitment to addressing poor practices in this area. Mr Longo pointed to ASIC's recent enforcement record, and to the financial penalties imposed on the companies in question, in support. Mr Longo also noted that '

in addition to ASIC action, anyone who suffers loss because of the breach can bring a civil action for damages. This isn't just against the entity; it includes any officer of the entity who was involved in the breach'.

- Mr Longo said that ASIC has 'recently observed an increase in media reporting ahead of fundraising and merger and takeover activity' and reminded all participants that ASIC expects entities involved in fundraising and control





transitions to 'proactively manage information about the transaction'. Specifically, Mr Longo said that ASIC expects market participants to:

- Require 'consultants and contractors to enter confidentiality agreements'
- Have in place 'appropriate arrangements to handle inside information, including on a "need to know" basis'
- Have a record of 'who's been provided with the inside information – and when'
- Ensure that 'continuous disclosure obligations are being actively monitored and met in relation to fundraising and control transactions'.

- Mr Longo added that ASIC expects entities to have in place 'a formal leak policy outlining steps to monitor and react to any leaks of proposed transactions'.

## Sustainable Finance

- Referencing the planned introduction of a new mandatory climate-disclosure regime in Australia (see: [Moving closer to introducing internationally-aligned climate reporting requirements in Australia: Initial consultation launched - POST - MinterEllison](#) and [Another step closer towards implementing mandatory climate disclosure in Australia - Post - MinterEllison](#)) and the release of the government's sustainable finance strategy (summarised in [Governance News 8 November at p15](#)) Mr Longo 'encouraged' companies to:

'begin engaging with the proposed climate disclosure requirements. Start considering what systems, processes and governance practices will need to be put into place to ensure your company is well placed to start reporting under a mandatory climate reporting regime in Australia'.

- Mr Longo also reiterated ASIC's continuing focus on taking action to address greenwashing, noting that it is again an enforcement priority for the regulator over the next 12 months. Mr Longo commented:

'it's up to you to make sure you can and do substantiate any and all claims relating to sustainable finance'.

## Stakeholder responsibility and activism

- Mr Longo also touched on the important role that stakeholders, investors (and retail shareholders) play in holding boards accountable for good governance and how this fits with ASIC's regulatory role in this context.
- An important message is that ASIC's regulatory role, though important, is necessarily limited. Mr Longo commented:

'Sometimes, when things go wrong, there's no scope for pursuing action against the board or the directors from a regulatory perspective. ASIC's regulatory role is to foster good corporate governance, and we're proud of our work to hold companies and directors to account. But, while we can encourage good practices and address past breaches of the law, Australia's corporate governance framework has many components, and ASIC's regulatory role is only one of them. As such, our work simply can't focus on future improvements to individual company performance. This is when we need to rely on the broader community – that is, the shareholders and potential investors – to make company boards accountable'.

- Mr Longo pointed to the AGM as the 'primary, formal means for shareholders to engage with their companies' and hold them to account on governance issues. Mr Longo considers that in Australia, shareholders actively exercise their rights at company meetings to do this – for example through voting 'against' remuneration reports to telegraph their views about company's performance.

- Mr Longo observed:

'Shareholders exercising their rights should sharpen the focus of every board. And, as investor relations professionals, this managing the relationship between shareholders and companies goes a long way towards improving a company's governance and accountability. That means ensuring shareholders have the information they need, and sharing and acting on feedback they give'.

[Source: ASIC Chair Joe Longo address to the Australasian Investor Relations Association Forum 28/11/2023]

## Top Story | Powering the energy transition: A renewable energy update

Following what it considers to have been a successful NSW CIS pilot, the Federal government has announced plans to expand the Capacity Investment Scheme (CIS) to 'target' 32 GW nationally - 9 GW of clean dispatchable capacity and 23 GW of variable capacity.

Importantly, the government has said it will provide

'revenue support for the selected CIS projects, with an agreed revenue 'floor' and 'ceiling'. This will provide a long-term revenue safety-net that decreases financial risks for investors and encourages more investment when and where it is needed'.

For context, the CIS [aims to](#) encourage new investment in renewable energy in the interests of both supporting reliability of supply and supporting the goal of reaching 82% of electricity generated from renewables by 2030.

You can find an expert overview and discussion of the implications here: [Powering the energy transition: A renewable energy update - Insight - MinterEllison](#)

[Sources: Minister for Climate Change and Energy Chris Bowen media release 23/11/2023; 24/11/2023]

## Status update | NSW Bill to legislate 2030 and 2050 emissions reduction targets, create a new monitoring body delayed

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

A new Bill - [Climate Change \(Net Zero Future\) Bill 2023 \(NSW\)](#) – was introduced by the government into the NSW parliament on 12 October 2023 which (if enacted) would do four things:

- set the following 2030 and 2050 targets for the reduction in net greenhouse gas emissions in New South Wales:
  - reduce net greenhouse gas emissions in New South Wales by at least 50% from the net greenhouse gas emissions in 2005 by 30 June 2030
  - reduce net greenhouse gas emissions in New South Wales to zero by 30 June 2050
- set an objective for New South Wales to be more resilient to a changing climate (the adaptation objective)
- establish a Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 targets and the adaptation objective
- establish guiding principles for action to address climate change. Summing up this aspect of the Bill Minister for Climate Change, Energy, Environment and Heritage Penny Sharpe [said that](#) the principles states that:

'actions should take into account the best available science. Further, actions should consider impacts on communities, economies, consumer costs, utilities and infrastructure, education and skills, jobs and health. Climate change impacts are far-reaching, and the work going into preparing our actions needs to reflect this. Finally, the guiding principles call out specific responsibilities of the New South Wales Government. The first is its responsibility to urgently develop and implement strategies, policies and programs to address climate change. The second is that government will pursue best practice in addressing climate change'.

[Minister Sharpe](#) has also flagged plans to establish (once the legislation is enacted) a joint standing committee – the Net Zero Future Committee – to inquire into and report on the 'findings, reports and operations of the Net Zero Commission' to provide a mechanism for members of both Houses to examine the findings/reports of the Commission in detail.

The Bill was referred to the Greens Chaired [Home Portfolio Committee No. 7 - Planning and Environment Committee for inquiry and report](#) by [17 November 2023](#).

### Committee report recommends further debate to address stakeholder concerns

In its report, the Committee [recommended](#) that:

'the Legislative Council proceed to debate the Climate Change (Net Zero Future) Bill 2023, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House'.

For clarity, while a number of submissions to the Committee were supportive in principle of the proposed reforms, submissions also raised [the following concerns](#):

- 'whether the emissions targets are sufficiently ambitious
- whether the Bill on its own is sufficient, due to both a lack of mechanisms for change outlined in the Bill and a lack of linkage with other legislation
- whether the Bill will override the current interim emissions target of 70 per cent reduction from 2005 levels by 2035
- whether the Net Zero Commission is independent and represents all stakeholders • whether the guiding principles overemphasise fiscal responsibility'.

### **Greens pushing for amendments (but will ultimately support the Bill)**

In a [statement](#), NSW Greens MP and spokesperson for Climate Change Sue Higginson said that the Bill

'has been delayed in the NSW Parliament while negotiations on amendments continue between the Government and the Greens'.

In particular, the Greens intend to push for:

- 'legislated targets [included in the Bill] to be binding'
- the inclusion of a 'ratchet mechanism in the Bill'

The [Bill](#) is yet to pass either House.

[Sources: Climate Change (Net Zero Future) Bill 2023 (NSW)]

## **Support appears to be building for the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (Cth)**

### **Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023**

On 3 August 2023, ACT Independent Senator David Pocock introduced a Bill into the Senate - [the Climate Change Amendment \(Duty of Care and Intergenerational Equity\) Bill 2023 \(Cth\)](#) – which, if legislated, would require decision-makers to consider the impact of climate harm on young people and future generations when making certain administrative decisions that are likely to contribute to climate change (ie decisions that facilitate the financing/development of projects that could significantly increase greenhouse gas emissions (GHG)).

Specifically, decision makers would both have a duty to:

- 'consider the health and wellbeing of current and future children in Australia when making certain administrative decisions contributing to climate change (called significant decisions)'
- 'not to make a significant decision in relation to the exploration or extraction of coal, oil or natural gas if the likely emission of greenhouse gases as a result of the decision poses a material risk of harm to the health and wellbeing of current and future children in Australia'.

The new requirements (or duty) would apply to decisions made under the following six existing pieces of legislation:

- Environmental Protection and Biodiversity Conservation Act 1999 (Cth)
- Export Finance and Insurance Corporation Act 1991 (Cth)
- Infrastructure Australia Act 2008 (Cth)
- National Reconstruction Fund Corporation Act 2023 (Cth)
- Northern Australia Infrastructure Facility Act 2016 (Cth)
- Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth),
- It seeks to add two conditions to decisions made including the Environmental Protection and Biodiversity Conservation Act 1999

The Bill is not proposed to operate retrospectively.

Senator Pocock has also announced a 'grassroots community campaign' to build support for the Bill.

## Why is this change considered necessary?

Senator Pocock considers that

'The Bill would plug a dangerous gap in the legislative framework exposed by the case [[Sharma and others v Minister for the Environment](#)] which highlighted the need to embed in legislation the principle that governments should care about the health and wellbeing of children....,

Politicians and policy makers should have a duty of care to protect the health and wellbeing of young people and future generations...We need a legislative tool that can be used in government decision making, and this Bill will deliver that'.

For context, [Sharma and others v Minister for the Environment](#) turned on the questions of whether the Minister for Environment had a duty of care to avoid causing harm to Australian children when deciding whether or not to approve a coal mine expansion; and if so, whether an injunction could be sought to stop the Minister from approving the coal mine expansion. For more see: [Sharma and others v, Minister for the Environment - Climate Change Litigation \(climatecasechart.com\)](#)

The Bill has been referred to the Senate Environment and Communications Legislation Committee for report (originally by 1 February which was then extended to) [1 March 2024](#)

## Support for the proposed reforms appears to be building

A number of submissions are supportive of the proposed reforms - the table below provides an overview of the key points in several submissions, including any recommendations they make around how the Bill could be improved.

SUBMISSION	RECOMMENDATIONS FOR IMPROVEMENT
Climate Council	<ul style="list-style-type: none"> <li>▪ The <a href="#">submission</a> does not include recommendations to further strengthen the Bill.</li> <li>▪ The submission does outline how the proposed duty could drive better decisions by government, as well as providing some broader context around why the duty is warranted/the global 'direction of travel' on the issue.</li> </ul>
Human Rights Law Centre	<p>The <a href="#">submission</a> recommends that:</p> <ul style="list-style-type: none"> <li>▪ The Bill be 'amended to require administrative decision makers to consider the likely impacts of greenhouse gas emissions on the "health, wellbeing, and rights" of current and future Australian children'.</li> <li>▪ The Bill be amended to include requirements to 'engage and consult meaningfully with children and young people when considering potential impacts on their health, well-being, and rights'.</li> <li>▪ The government 'formally enshrines the right to a clean, healthy, and sustainable environment into Australian law as part of <b>a national Charter of Human Rights</b>'. [emphasis added]</li> </ul>
Australian National University Institute of Climate, Energy and Disaster Solutions (ICEDS)	<p>The <a href="#">submission</a> includes five recommendations to further strengthen the Bill:</p> <ul style="list-style-type: none"> <li>▪ 'Expand and clarify the definition of health and wellbeing'.</li> <li>▪ 'Include special considerations for marginalised young people'.</li> <li>▪ 'Look to international examples of intergenerational justice embedded in law'.</li> <li>▪ 'Focus on repairing government relationships with Australia's children and young people'.</li> <li>▪ 'Advocate for a duty of care to be embedded in all relevant legislation'</li> </ul>
Queensland University of Technology Environmental and Social Governance Research Group (ESGRG)	<p>The <a href="#">submission</a> recommends that the government:</p> <ul style="list-style-type: none"> <li>▪ 'Incorporate principles of intergenerational equity into all legislation where a decision made under the Act could affect the rights of future generations; and</li> <li>▪ Develop further policies to facilitate strong adherence to the Convention on the Rights of the Child, considering the new interpretation of States' roles in protecting children from climate change, provided by General Comment No.</li> </ul>

SUBMISSION	RECOMMENDATIONS FOR IMPROVEMENT
	26 [See: <a href="#">Committee on the Rights of the Child, General Comment No. 26 (2020) on children's rights and the environment, with a special focus on climate change, CRC/C/GC/26 (22 August 2023)</a> .] which states that: a clean, healthy, and sustainable environment is a human right in and of itself'.

[Source: David Pocock media release 31/07/2023; Protecting the Spirit of the Sea Country Bill (2023) (Cth)]

## Greenwashing enforcement action: ACCC accepts CEU from yoghurt manufacturer over ocean plastic claims

- The Australian Competition and Consumer Commission has [announced](#) that it has accepted a court-enforceable undertaking (CEU) from a yoghurt manufacturer following an investigation into claims made by the company on its yoghurt packaging, website, and social media pages that '100% of its yoghurt tubs were made from '100% ocean plastic'.
- The ACCC considered that the claim '100% ocean plastic' gives the 'impression' that the tubs were made from plastic waste collected directly from the ocean when in fact the plastic resin used in the manufacture of the tubs was collected from coastal areas in Malaysia (not directly from the ocean).
- Notably, the company included disclaimers at the top and back of the packaging but the ACCC considered these were 'insufficient to overcome the headline representation of "100% ocean plastic"'.

### Agreed actions to address these concerns

Under the CEU the company admitted that the '100% ocean plastic' claims 'likely contravened the Australian Consumer Law, which prohibits false or misleading representations'.

The company has committed to publishing a corrective notice on its website and social media in the next seven days which (will remain in place for 60 consecutive days).

In addition the company has committed to:

- 'Updat[ing] the packaging design of its yoghurt products to stop making the Ocean Plastic Representations, and conduct a comprehensive review of [its]...website and social media platforms to ensure all 'ocean plastic' claims are removed;
- Conduct[ing] internal audits relating to the nature and location of the 'ocean bound plastic' resin used in [its]...yoghurt product packaging; and
- Establish[ing] and implement a compliance program'.

You can find further details in the CEU: [MOO Premium Foods Pty Ltd | ACCC](#)

### Broader context

- Taking action to address consumer, product safety, fair trading and competition concerns in relation to environmental and sustainability claims is among the ACCC's enforcement and compliance priorities for 2023=2024.
- This ACCC comments that this latest action should serve as a 'reminder of the importance for businesses to regularly review any environmental or sustainability claims about their products to ensure they are correct and up to date'.
- Separately, taking action against '[greenwashing](#)' is also a continuing enforcement priority for the Australian Securities and Investments Commission (ASIC).

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

## New Hope shareholders reject shareholder capital protection proposal

All management-proposed resolutions were [carried](#) at the New Hope Corporation Ltd (New Hope) 23 November 2023 AGM.

Two shareholder ESG resolutions – the usual constitutional amendment accompanied by a contingent advisory capital protection resolution – both of which were opposed by the board, failed to carry.

[Note: In Australia shareholders typically propose a special resolution – a constitutional amendment (a machinery type resolution to allow shareholders to bring non-binding, advisory resolutions) - accompanied by separate ordinary (advisory) resolution containing the substantive demand/request of the company. This contingent advisory resolution is only formally put to the meeting if the special resolution secures the necessary 75% support to carry. For an explanation of why the legal framework in Australia makes this necessary see: [Ramsay, I., & Freeburn, L. An Analysis of ESG Shareholder Resolutions in Australia UNSW Law Journal, 2021 Volume 44\(3\) at p1146-1149](#). The Australian Council of Superannuation Investors has [long advocated](#) for reform, recommending the introduction of an 'ordinary non-binding shareholder resolution framework'. You can find ACSI's 2017 policy paper on this topic here: [Shareholder-resolutions-in-Australia.Oct17.pdf \(acsi.org.au\)](#).]

Proposal 8 (shareholder, capital protection proposal) secured close to 12% proxy support. A similar proposal, also filed by Market Forces at Whitehaven Coal Ltd secured [17.81% proxy support at the company's October 2023 AGM](#).

To put these results in context, a study into the rise of shareholder ESG resolutions in Australia – see: [Ramsay, I., & Freeburn, L. An Analysis of ESG Shareholder Resolutions in Australia UNSW Law Journal, 2021 Volume 44\(3\) 1142-1179](#) - suggests that even where shareholder ESG resolutions are not passed by a majority of shareholders, or withdrawn, they nevertheless are effective in catalysing a response from companies.

## How did investors vote?

The table below provides a snapshot of the vote results on the two shareholder proposals and an indication of how some investors voted on each.

PROPOSAL	VOTE RESULT	HOW (SOME) INVESTORS VOTED
<p>(Shareholder) <a href="#">Proposal 7 in the Notice: Amendment to the Constitution</a></p> <p>The proposal, filed by Market Forces called on the company to amend the constitution to enable shareholders to put an ordinary resolution to a general meeting.</p> <p>The proposal is a special resolution (75% or more votes in support are required for the resolution to be carried).</p>	<ul style="list-style-type: none"> <li>0.71% support (90.29% against)</li> </ul>	<ul style="list-style-type: none"> <li>NYC pension funds (new York City Board of Education Retirement, New York City Employees Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, Teachers Retirement System of the City of New York) <a href="#">voted against</a>. The funds also <a href="#">voted against</a> the proposed constitutional amendment at Whitehaven.</li> <li>California Public Employees Retirement System (CalPERS) <a href="#">voted</a> in support</li> <li>Legal and General Investment Management (LGIM) <a href="#">voted against</a>. Interestingly, LGIM <a href="#">supported</a> the proposed constitutional amendment at Whitehaven.</li> </ul>
<p>(Shareholder) Climate <a href="#">Proposal 8 in the Notice: Capital Protection</a></p> <p>The proposal calls on the company to 'disclose, in subsequent annual reporting, information that demonstrates how the company's capital expenditure and operations pertaining to coal assets will be managed in a manner consistent with a scenario in which global energy emissions reach net zero by 2050'.</p> <p>disclose, in subsequent annual reporting, information that</p> <p>The proposal is an ordinary advisory proposal that is contingent on the passage of the constitutional amendment - in order to be formally put before the meeting, the constitutional amendment (Proposal 7 would need to be carried).</p>	<ul style="list-style-type: none"> <li>11.72% proxy support (88.06% against)</li> </ul>	<ul style="list-style-type: none"> <li>NYC pension funds <a href="#">voted in support</a> (NYC funds <a href="#">also supported</a> the capital protection proposal at Whitehaven).</li> <li>California Public Employees Retirement System (CalPERS) <a href="#">voted</a> in support</li> <li>LGIM <a href="#">voted in support</a>, stating that: <ul style="list-style-type: none"> <li>'A vote in favour is applied as LGIM expects companies to be taking sufficient action on the key issue of climate change'.</li> <li>LGIM <a href="#">also supported</a> the capital protection proposal at Whitehaven.</li> </ul> </li> </ul>

[Sources: New Hope Corporations Ltd: Notice of Meeting; Results of Meeting]

## How to set nature targets: PRB releases new TNFD aligned guidance for banks

- The [Principles for Responsible Banking](#) (PRB) has [released](#) new TNFD-aligned, [Nature Target Setting Guidance for banks](#), aimed at 'helping the banking industry align with the Kunming-Montreal Global Biodiversity Framework (GBF) and address nature and biodiversity loss'.
- The [guidance](#) is intended to guide banks in assessing their exposure to nature-related impacts and dependencies, as well as offering insights into how banks should approach the task of integrating nature into their practices and processes – including suggested actions and 'sample targets'.
- The PRB plans to support implementation of the new guidance through providing training and 'furthering efforts on impact targets and common metrics between financial industries'.

[Source: UNEP Media release 22/11/2023]

## Successful engagement: Corning Inc sets science-based GHG targets, agrees to develop climate transition plan

- Green Century has [welcomed](#) Corning Inc's adoption of Paris-aligned, science based greenhouse gas (GHG) emissions reduction targets (in line with its commitment to do so by 2023) and new commitment to develop a climate transition plan. Corning has committed to include details in its next sustainability report in 2024.
- Green Century attributes these actions by the company to successful engagement - through the filing of a shareholder proposal in 2020, and agreements secured through subsequent meetings with the company in the years since.
- Green Century Shareholder Advocate Andrea Ranger commented:

'Now that more and more companies have committed to significantly cut their emissions, investors and stakeholders want assurance that goals and targets aren't just greenwashing...We're eager to see Corning develop a credible climate transition plan provides milestones, indicators for success, mechanisms for board and executive oversight, and enough details to instil investor confidence.'

[Source: Green Century media release 21/11/2023]

## In Brief | The Insurance Council of Australia has released an updated 'climate change roadmap' outlining the industry's commitment and the progress achieved to date towards achieving net zero emissions by 2030 for operations and 2050 across the entire value chain

[Source: Insurance Council of Australia media release 27/11/2023]

## In Brief | Four suggested reforms to enable the government to deliver on its goal to protect 30% of land by 2030 - New report calls on the government to: a) establish a \$5billion fund to purchase land 'of high biodiversity value for new public, private or Indigenous Protected Areas'; b) continue to invest in Indigenous Protected Areas; c) support private land conservation efforts including through direct federal support to state/territory conservation covenant programs; and d) partner with states and territories to 'identify areas of high conservation significance on unallocated land and transition them into conservation tenures'.

[Sources: The Nature Conservancy media release 27/11/2023; The Nature Conservancy (TNC), WWF-Australia, Pew Charitable Trusts and the Australian Land Conservation Alliance (ALCA) Joint report: Pathways to 30x30 Report]

# Financial Services

## Top Story | Banks announce Scam Safe Accord

### Among other new measures, banks are set to invest \$100 million in a new confirmation of payee system

As [previously reported](#), following a record year for consumer scam losses, regulators, have stepped up their focus on scam prevention. Likewise, the government and the Australian Banking Association (ABA) have announced new anti-scam measures (see: [Combatting online scams: Government and the banking sector announce new measures](#)).

This week, a coalition of banks, led by the Australian Banking Association and the Customer Owned Banking Association, have announced a new '[Scam Safe Accord](#)' aimed at delivering 'a higher standard of protection for customers and put scammers out of business in Australia'.

Under the 'Accord' which applies to all ABA and COBA member organisations, banks will:

- Invest \$100 million to roll out 'confirmation of payee' technology over 2024 and 2025 – the purpose of this measure is essentially to enable people to confirm that they are transferring money to the intended recipient.
- 'Adopt further technology and controls to help prevent identity fraud, including major banks using at least one biometric check [eg a check of a customers' face or finger print] for new individual customers opening accounts online by the end of 2024'
- Introduce additional warnings and payment delays to protect customers from falling victim to scams by the end of 2024
- Join the Australian Financial Crimes Exchange to be ready 'to share intel to fight scams' from mid-2024
- Join the Fraud Reporting Exchange to 'help customer recover money faster' over 2024-25
- Introduce limits on payments to 'high-risk channels' eg crypto currency platforms to protect customers from potential theft
- Implement an Anti-Scams strategy to 'enhance oversight of...scams detection and response'.

### The government, consumer advocates have welcomed the Accord

In a [statement](#) Assistant Treasurer and Minister for Financial Services Stephen Jones described the Accord as a 'proactive step up' for the sector which will complement government-led initiatives already in place, as well as planned new initiatives (eg the planned new anti-scam industry codes).

The Consumer Action Law Centre (CALC) has [also](#) welcomed the measures, and in particular the confirmation of payee measure, as 'long overdue'.

CALC has called on other sectors to follow the example set by the banking sector. The statement also reiterates CALC's previous calls for the government to introduce mandatory reimbursement of customers' money lost to scams.

### Previous updates

- [Combatting online scams: Government and the banking sector announce new measures - POST - MinterEllison](#)
- [Regulatory focus on combatting scams and strengthening cyber resilience continues - POST - MinterEllison](#)
- [First anti-scam centre 'hit squad' to target online investment scams - Post - MinterEllison](#)

[Source: ABA media release 24/11/2023]



## QAR Implementation | Government has reiterated it is a case of 'if, not when' safe harbour and SOA reforms will be implemented

Our key takeaways from Assistant Treasurer and Minister for Financial Services Stephen Jones' 22 November 2023 [address](#) to the Financial Advice Association of Australia (FAAA) are below.

- Mr Jones underlined the importance the government places on improving the accessibility and affordability of retirement income advice, reiterating that this is the rationale behind the planned expansion of the role of superannuation funds in this context.
- Mr Jones said that he considers the government is 'on track and on time' in implementing its response to the Quality of Advice Review recommendations, with the planned ['first tranche' of legislation](#) recently released for consultation. For more on the draft Bill see: [Quality of Advice Review | Consultation opens on draft Bill to implement the 'first tranche' of planned reforms - POST - MinterEllison](#)
- Mr Jones said that the government intends to release further legislation in 2024.

### Replacing SOAs and removing the safe harbour steps – a case of 'when, not if' the government will act

- The [government's response](#) to the Quality of Advice Review (read: [Government response to the Quality of Advice Review](#)) flagged that 'Stream one' or 'tranche one' of legislative reforms would include:
  - The removal of the 'safe harbour steps' from the Best Interest Duty 'with consultation [undertaken] to determine implementation details and the implications of adopting the remaining parts of Recommendation 5' (ie the replacement of the 'best interests duty' with a new statutory best interests duty which would only apply to financial advisers)
  - The replacement of 'Statements of Advice' (SOAs) with 'an advice record that is more fit-for-purpose, with consultation to determine the final design of the replacement' (in line with the government's response to Recommendation 9).
- However the [draft Bill](#) does not address either of these issues.
- Mr Jones said that the government had hoped to 'address these pain points' in the draft Bill, but that this did not occur because he considers further specific consultation on these reforms is required in order to ensure that the changes achieve their intended aims. Mr Jones commented:



'I believe the mistakes in this policy space in the last few years could have been avoided by working with industry. Rather than dictating to industry. I want to make sure we make a meaningful difference that sets up the advice industry to support better outcomes for consumers'.

- Mr Jones underlined that the government remains committed to implementing the reforms including 'replacing statements of advice' and 'removing the safe harbour steps' stating that it is 'a case of when, not if' the government will implement these changes.
- Mr Jones also reiterated the government's commitment to increasing the pool of advisers in order to meet growing demand, noting the passage of the experience pathway legislation – [Treasury Laws Amendment \(2023 Measures No. 3\) Bill 2023 \(Cth\)](#) - which aims to retain experienced advisers in the industry. Looking ahead, Mr Jones said that the government considers there is a need to increase the number of advisers into the sector, noting that he had received feedback that existing 'pathways [into becoming and adviser] need more flexibility'.

[Source: Assistant Treasurer and Minister for Financial Services Stephen Jones Address to the Financial Advice Association of Australia Congress 2023 22/11/2023]

## APRA consults on new cross-industry standard to consolidate all existing standards on definitions for ADIs and insurers

- As part of its broader efforts to modernise the prudential architecture, the Australian Prudential Regulation Authority (APRA) has [opened a consultation](#) on a proposed new cross industry standard – [draft CPS 001 Defined terms \(CPS 001\)](#) [in markup] - that would consolidate the five existing standards on definitions for authorised deposit-taking institutions and insurers - APS 001 Definitions, GPS 001 Definitions, LPS 001 Definitions, HPS 001 Definitions and 3PS 001 Definitions - into a single new standard.
- Importantly, APRA states that draft CPS 001 'does not introduce any new defined terms but simply consolidates existing definitions into one place'.
- Draft CPS 001 would also remove terms that are no longer in use and address duplication.
- APRA considers the new standard will also play an important role in supporting the development of a new digital framework – planned for release in H2 2024 - which will 'bring together all of APRA's prudential standards, guidance and supporting information into a dynamic format that can be searched and navigated easily'.

### Proposed timing

- The due date for submissions is on draft CPS 001 is 13 March 2024.
- Subject to feedback, APRA expects that the finalised CPS 001 would take effect on 1 July 2024.

[Source: APRA letter to industry 27/11/2023]

## New Senate Inquiry into insurance in retirement launched

The Senate Economics References Committee, [is set to conduct](#) a new inquiry into 'improving consumer experiences, choice, and outcomes in Australia's retirement system' with a particular focus on the role of insurance in this context.

### Terms of Reference

Under the [Terms of Reference](#), the Committee will consider (among other matters):

- 'regulatory and tax impediments to innovation and uptake of insurance products in retirement;
- 'the interaction of health insurance, life insurance, general insurance, and social security supports to retirement outcomes, including options to improve incentives that drive consumer outcomes and support the sustainability of the retirement income system'
- 'the impact of climate change on insurance premium affordability and accessibility'
- 'the impact that climate change is likely to have on insurance premiums for products including life, home and contents and small business'
- 'the impact of climate change on the value of assets (eg ,houses, investments) of retired people'
- 'the potential role of FinTech platforms, technologies, and innovations in supporting better retirement outcomes'

- 'policy options to support greater choice and quality of life in the retirement income system, including but not limited to the aged pension, financial advice, home ownership and downsizing, and insurance'
- 'progress on implementing the Retirement Income Covenant'

## Timing

The Inquiry is due to report by 30 June 2024.

The Inquiry is not currently accepting submissions as no closing date for submissions has been set at this stage.

[Source: Liberal Senator Andrew Bragg media release 27/11/2023]

## Consultation opens on options to regulate the use of genetic testing results in life insurance underwriting

In response to community concerns and calls for government intervention to ensure that people are not being dissuaded from taking genetic tests over fears about the potential impact on their ability to access life insurance, the government has released a [consultation paper](#) seeking stakeholder views on potential options to regulate the use of genetic testing results in life insurance underwriting.

### Potential options for reform

These options are:

- **Option 1 - No government action/intervention:** Under this option, the use of genetic testing results by life insurers would continue to be governed by both the Disability Discrimination Act 1992 (Cth), and the Life Insurance Code of Practice. However, it would not rule out industry-led action eg increasing the financial thresholds within the industry moratorium (included in [Appendix A to the Life Insurance Code of Conduct](#)) on the use of these tests, and/or submitting the Life Insurance Code of Practice to ASIC for approval as a Code of Conduct under s1101A of the Corporations Act 2001 (Cth).
- **Option 2 - Legislating a total or partial ban on the use of adverse genetic testing results by life insurers.**
  - Under a total ban, life insurers would be prohibited from requesting or utilising any adverse genetic testing results to inform their underwriting calculations.
  - Under a partial ban, life insurers would be 'prohibited from requesting or utilising any adverse genetic testing results to inform their underwriting decision, subject to certain exemptions'
- **Legislating the financial threshold** below which insurers cannot request or utilise adverse genetic testing results in their underwriting. The consultation paper states that:
 

'Any financial limit developed under this option would exceed the existing thresholds detailed in the Life Insurance Code of Practice, and would be subject to regular and ongoing reviews to ensure they remain at an appropriate level. For example, the limit on death benefit covered could be increased to \$1.5 million'.

### Oversight, compliance and enforcement with any new obligations

The consultation paper also seeks views on whether the Australian Human Rights Commission or the Australian Securities and Investments Commission should be given responsibility for supporting and enforcing compliance with any new obligations.

### Proposed timing and next steps

The due date for submissions is 31 January 2024.

The consultation paper flags that further consultation may be undertaken 'on an as needed basis'.

[Sources: Treasury Consultation: Use of genetic testing results in life insurance underwriting 27 November 2023 to 31 January 2024; Assistant Treasurer and Minister for Financial Services Stephen Jones media release 27/11/2023]

# Risk Management

## National Anti-Scam Centre: First impact report shows 16% drop in scam losses

### What is the NASC?

- 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 Australian Competition and Consumer Commission (ACCC) to move forward with establishing the National Anti-Scam Centre (NASC).
- The 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 first of these fusion cells focused on tackling online investment scams. For more on the NASC see: [First anti-scam centre 'hit squad' to target online investment scams - Post - MinterEllison](#)

### First impact report released

The government has released the first Quarterly Report from the new National Anti-Scam Centre (NASC) covering the first four months of its operation – July to September 2023.

According to the [report](#):

- **Overall scam losses were down on last year:**
  - Scam losses for Q3 2023 decreased 16% on Q3 2022 to \$111.4 million
  - Q3 2023 saw losses across most scam types come down (vs Q2 2023)
- **The highest losses for Q3 2023** were due to:
  - **investment scams:** losses investment scams totalled \$69.4 million, accounting for over 60% of total scam losses for Q3 2023. However, this was still down on the same quarter last year - \$74.1 million was lost to investment scams in Q3 2022.
  - **romance scams:** losses to romance scams totalled \$9.1 million in Q3 2023 (down from \$12.6 million in Q3 2022)
  - **false billing:** losses to false billing scams totalled \$6.5 million in Q3 2023 (up from \$5.2 million in Q3 2022)

[Announcing](#) the release of the report, Assistant Treasurer and Minister for Financial Services Stephen Jones said that the figures demonstrate the 'impact' of the National Anti-Scam Centre and also underlined the need for continuing consumer vigilance.

Mr Jones also reiterated that the government is working on developing new industry codes for banks, telecommunications companies and digital platforms which will 'set clear, robust obligations to protect Australians against scams'.

[Sources: Assistant Treasurer and Minister for Financial Services Stephen Jones media release 26/11/2023; National Anti-Scam Centre in Action Quarterly Update (July to September 2023)]

## Privacy protections | Government to introduce 'Digital ID' legislation, announces tougher 'anti-fraud controls'

- Assistant Treasurer and Minister for Financial Services Stephen Jones has [announced](#) the introduction of new fraud controls aimed at making it 'harder for criminals to commit identity fraud and safer for taxpayers when interacting with government online'.
- Individuals who use their myGovID to log in to the Australian Taxation Office (ATO) will now need to use their myGovID for future logins.
- Mr Jones also flagged plans to introduce new 'Digital ID legislation' into parliament that will 'create a safer ID system which will be accessible across the public and private sector and with stronger privacy protections'.

[Source: Assistant Treasurer and Minister for Financial Services Stephen Jones media release 23/11/2023]

## OAIC | Freedom of Information Commissioner and Privacy Commissioner appointments announced

Attorney General Mark Dreyfus has [announced](#) the appointment of standalone Privacy and Freedom of Information (FOI) Commissioners within the Office of the Australian Information Commissioner (OAIC).

- Carly Kind (inaugural Director of the London-based Ada Lovelace Institute since 2019) has been appointed as Privacy Commissioner. Ms Kind's appointment will commence on 26 February 2024. V Ms Angelene Falk, the Australian Information Commissioner, will continue as Privacy Commissioner until that time.
- Elizabeth Tydd (Information Commissioner and CEO of the NSW Information and Privacy Commission since 2013) has been appointed as the Freedom of Information (FOI) Commissioner, who will take over from Toni Pirani who has been Acting in the role since May 2023. Ms Tydd's appointment will commence on 19 February 2024.

[Source: Attorney General Mark Dreyfus media release 26/11/2023]

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