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 visible in the top left corner of the image.

Governance News

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

18 October 2023

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Shareholder Activism

Green Century targets Deere tractor company with shareholder proposal

- Green Century [has filed a shareholder proposal](#) at Deere & Company calling on it to publicly report on the reputational damage (that Green Century considers may result) from its opposition to 'Right to Repair' legislation targeting farm equipment.
- For context, the legislation in question allows farmers to access the necessary information - diagnostic software, instructions – as well as parts, to enable them to repair their own machinery. Colorado became the first state to enact these [laws in April 2023](#). Green Century notes that since then, 30 additional states have introduced similar Bills.
- Green Century's statement flags a number of concerns/potential sources of reputational risk/financial risk for the company stemming from Deere's stance on the issue. These include:
 - Farmers have launched a class action lawsuit against the company alleging it violated antitrust laws by restricting repair to dealerships – increasing its profits (and increasing costs to farmers).
 - The company 'may have made misleading statements in federal filings regarding the environmental consequences of repair'
 - The company is still standing in the way of Right to Repair legislation – the company's Memorandum of Understanding with the American Farm Bureau Federation allows farmers to buy access to repair information, but also restricts the Farm Bureau from advocating for enforceable legislation and enables the company to withdraw from the agreement if any legislation is passed.
- Green Century previously filed a shareholder proposal with Deere on the same issue in 2021, but the company was successful in blocking it from proceeding to a vote after the Securities and Exchange Commission (SEC) approved its petition to exclude it.

[Source: Green Century media release 11/10/2023]

Costco commits to five year plastic reduction plan and increased disclosure following shareholder engagement

- Green Century has [claimed credit](#) for new plastic reduction commitments from Costco Wholesale, following the filing of a shareholder proposal at the company.
- According to Green Century's announcement, Costco has committed to both:
 - increase its plastic footprint disclosures, including disclosing the total percentage of recycled content in its plastic packaging – full details are expected to be released by the company in July 2024.
 - release a five year plastic action plan outlining the steps the company will take to reduce total plastic in its Kirkland Signature Packaging, and report annually on progress against the plan. This plan is expected to be released in December 2024.
- While welcoming Costco's new commitments, Green Century makes clear it considers 'more work is needed to address the company's exposure to single use plastics' pointing to an earlier [letter](#) signed by 185 investors/asset managers (including Green Century) in May 2023. The letter calls for companies to immediately: a) reduce single-use plastic packaging; b) phase out hazardous chemicals; c) increase reusables; and d) advocate for responsible plastic legislation.

[Source: Green Century media release 10/11/2023]

Meetings and Proxy Advisers

Anti-ESG proposal voted down by P&G shareholders

Procter and Gamble Company (P&G) held its annual shareholder meeting on 10 October 2023.

Three shareholder proposals went to a vote, all of which were opposed by the board.

None of the proposals were carried, though [Proposal 7](#) – a shareholder governance proposal calling for a requirement for shareholder approval of certain (potential, future) actions to be introduced – looks to have secured (approx) 43% support.

For context, though the proposal failed to secure majority support, the fact that it secured well over 30% is (potentially) significant as 30% is the level of support likely (based on a study from BlackRock) to provoke action by the company - according to BlackRock, 75% of proposals that secured at least 30% of votes resulted in companies taking action.

Support was much lower for the other two shareholder proposals that went to a vote – a request for a civil rights audit of 'reverse discrimination' ([Proposal 5](#)) and a separate request for annual reporting on operations in China ([Proposal 6](#)) - both secured approx 4% support.

To provide some context for this result, according to [Institutional Shareholder Services](#) (ISS) 'anti-ESG proposals' (like Proposal 5) have 'typically' secured less than 5% support over time, despite the fact that the volume of this category of proposals continues to increase. It's less clear whether proposals like Proposal 6 fall into this category.

The table below provides a snapshot of each of the proposals, together with the (approx) vote result and an indication of how some investors voted in each case.

SHAREHOLDER RECOMMENDATION	PROPOSAL AND BOARD	(APPROX) VOTE RESULT	HOW (SOME) INVESTORS VOTED
<p>Civil rights audit of 'reverse discrimination' (conservative proposal): Proposal 5 in the Notice called on the board to commission and publicly report on the results of an audit</p> <p>'to assess the impact of the Company's policies on non-BIPOC (Black, Indigenous and people of colour) and non-Latinx/a/o/e communities.'</p> <p>The key reason behind the board's reasons for recommending shareholders vote against the proposal is that:</p> <p>'P&G strongly disagrees with the proponent's assertion that certain of the Company's Equality & Inclusion efforts are "regressive developments" or that the Company "cater[s]" to only "certain identities." P&G's broad E&I aspirations and employee development work are designed to ensure our Company reflects the billions of diverse people we serve around the world.'</p>		Approx 4% support	<p>Unsurprisingly given the low level of support, many investors voted against. For example:</p> <ul style="list-style-type: none"> Legal and General Investment Management (LGIM) voted against the proposal. The justification given is that: <ul style="list-style-type: none"> 'A vote AGAINST this resolution is warranted as the company's current policies and disclosures provide adequate information for shareholders to determine whether its policies are having an impact on non-BIPOC (Black, Indigenous and people of colour) and non-Latinx/a/o/e communities'. NBIM also voted against, stating that: <ul style="list-style-type: none"> 'We will not support a shareholder proposal where the company does not appear to have significant gaps in their management or reporting of the relevant sustainability risk. We assess companies against our public expectations on environmental and social issues. We may consider direction of travel and pace of change as part of our assessments'.

SHAREHOLDER PROPOSAL AND BOARD RECOMMENDATION	(APPROX) VOTE RESULT	HOW (SOME) INVESTORS VOTED
		<ul style="list-style-type: none"> ▪ California Public Employees' Retirement System (CalPERS) voted against (no further details are given) ▪ New York City Board of Education Retirement System, New York City Employees' Retirement System, New York City Police Pension Fund, Teachers' Retirement System of the City of New York (NYC pension funds) voted against ▪ California State Teachers' Retirement System (CalSTRS) voted against (no further details are given)
<p>Operations in China: Proposal 6 in the Notice called on the company to</p> <p>'report annually [from 2024] to shareholders on the nature and extent to which corporate operations depend on, and are vulnerable to, Communist China, which is a serial human rights violator and a geopolitical threat. The report should exclude confidential business information but provide shareholders with a sense of the Company's reliance on activities conducted within, and thus under the control of, the Chinese government'.</p> <p>In recommending shareholders vote 'against' the proposal, the P&G board stated that:</p> <p>'P&G's current approach of reporting, risk management, and respect for human rights is a better and more comprehensive means to address the proposal's concerns'.</p>	<p>Approx 4% support</p>	<p>Similarly, a number of investors voted against this proposal:</p> <ul style="list-style-type: none"> ▪ Legal and General Investment Management (LGIM) voted against the proposal. The justification given is as follows: <ul style="list-style-type: none"> 'A vote AGAINST this proposal is warranted, as the company appears to provide shareholders with sufficient disclosure to understand to what extent corporate operations depend on China'. ▪ NBIM also voted against giving the same reasons as provided for voting against Proposal 5. ▪ CalPERS voted against (no further details are given) ▪ NYC pension funds voted against ▪ California State Teachers' Retirement System (CalSTRS) voted against (no further details are given)
<p>Shareholder approval to be sought for certain (potential future) actions: Proposal 7 in the Notice called on the company to</p> <p>'initiate actions to ensure the Company will not, without shareholder consent, amend Company bylaws to expressly:</p> <p>(1) require nominating stockholders that are investment funds or other investment vehicles to disclose the identities of less than five percent stockholders, members, limited partners, or holders of similar economic interests solely on account of such holders' economic interests,</p>	<p>Approx 43% support</p>	<p>A number of investors voted in support of this proposal:</p> <ul style="list-style-type: none"> ▪ Legal and General Investment Management (LGIM) voted in support of the proposal. The justification given is that: <ul style="list-style-type: none"> 'A vote FOR this proposal is warranted. Although the board has not unilaterally adopted any problematic advance notice provisions in the Code of Regulations, the proposal is considered to be narrowly tailored to prevent unilateral adoption only of highly restrictive provisions to which

SHAREHOLDER RECOMMENDATION	PROPOSAL AND BOARD	(APPROX) VOTE RESULT	HOW (SOME) INVESTORS VOTED
	<p>(2) require nominating stockholders to disclose plans to nominate candidates to the board of directors of other public companies, or</p> <p>(3) require nominating stockholders to disclose prior stockholder proposals or director nominations that such a stockholder privately submitted to other companies'.</p> <p>In recommending shareholders vote 'against' the proposal, the board observed that the requested changes do:</p> <p>'not provide any meaningful benefit to our shareholders, and could, in fact, be harmful. The proposal seeks to solve a problem that does not exist and, in the process, would limit our Board's ability to make decisions in the best interest of our shareholders in the future when circumstances for the Company and the shareholders may be significantly different than they are today.'</p>		<p>shareholders have objected at other companies'.</p> <ul style="list-style-type: none"> CalPERS voted in support (no further details are given) NYC pension funds voted in support (no further details are given) California State Teachers' Retirement System (CalSTRS) voted in support (no further details are given) NBIM voted against (no justification was given).

[Sources: Proctor and Gamble SEC filings: Notice of meeting; Results of meeting]

Remuneration proposals attract protest vote at CSL

Biotechnology company CSL Ltd held its AGM on 11 October 2023.

All proposals were carried. However, the two remuneration-related proposals both attracted a strong protest vote of close to 25% 'against'.

[Note: For context, the reason the 25% figure is significant is that a 25% against vote would have constituted a 'first strike'. In Australia, 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 against the company's remuneration report. For more on the operation of the two strikes rule see: [Executive remuneration: a quick guide – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)]

Despite the result, a number of investors – as shown in the table below - voted in support of the proposals (in line with management's recommendation).

PROPOSAL	VOTE RESULT	HOW (SOME) INVESTORS VOTED
Proposal 4 in the Notice: Approve Remuneration Report	<ul style="list-style-type: none"> 76.96% support (23.04% against) 	<ul style="list-style-type: none"> Norges Bank Investment Management (NBIM) voted in support California Public Employees Retirement System (CalPERS) voted in support California State Teachers Retirement System (CalSTRS) voted in support NYC pension funds (new York City Board of Education Retirement, New York City Employees Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, Teachers Retirement System of the City of New York) voted in support.

PROPOSAL	VOTE RESULT	HOW (SOME) INVESTORS VOTED
Proposal 5 in the Notice: Approve equity grant to MD/CEO Paul McKenzie	75.05% support (24.95% against)	<ul style="list-style-type: none"> NBIM voted in support CalPERS voted in support CalSTRS voted in support NYC pension funds voted in support

Similarly, ahead of the meeting, the Australian Shareholder Association (ASA) [indicated its support](#) for both proposals. Broadly, the ASA considered it appropriate to support the proposals despite some reservations. The ASA [writes](#):

'CSL operates in the global biopharmaceutical sphere, so Australian practices aren't always applicable. There are many attributes of the CSL remuneration plan that we favour. On the other hand, the performance period for the LTI is shorter than we like. Other areas not meeting ASA guidelines are explained by CSL better matching global standards. On balance we propose to support the remuneration report.'

Some commentators ([The Australian](#)) identify the driver behind the 'against' votes as the fall in the company's share price.

Reportedly ([The AFR](#)) AustralianSuper is understood to have opposed the remuneration report over late adjustments applied to bonus targets

[Sources: CSL Ltd AGM results announcement 11/10/2023; CSL 2023 AGM – Chair and CEO Speech and Presentation; ASA voting intentions]

Treasury Wine Estates shareholders deliver 'first strike'

Treasury Wines Estates (TWE) shareholders have delivered a 'first strike' against the company's remuneration report with 46.08% of shareholders voting 'against'.

[Note: For context, the 'two strikes rule' means that boards face the prospect of being 'spilled' if 25% or more of shareholders vote against the resolution to approve the company's remuneration report at two consecutive AGMs – that is, if there are two consecutive 'strikes' (25% or more 'against' votes) against the company's remuneration report. For more on the operation of the two strikes rule see: [Executive remuneration: a quick guide – Parliament of Australia \(aph.gov.au\)](#). In this case, as TWE directors stand for election annually in any case, the impact of this is (arguably) minimal.]

Reportedly ([The West Australian](#)) proxy advisers advised shareholders to oppose the resolution to telegraph concern over the board's decision to allow incentives for three executives to vest (despite the fact that a financial target had not been met) as a result of the imposition of Chinese tariffs.

These concerns were not universally held. Ahead of the meeting, the Australian Shareholder Association (ASA) [confirmed its intention](#) to support both resolutions – despite expressing reservations around certain aspects of the remuneration report. The ASA writes:

'In conclusion, we believe the level of remuneration is not excessive and the incentives are generally aligned with shareholders expectations. However the report is not clear or easy to understand for certain sections and some information is difficult to find. We will continue requesting for this to be addressed by the company. Nevertheless, we will be supporting the report'.

The table below provides some insight into how (some) investors voted.

RESOLUTION	VOTE RESULT	HOW INVESTORS VOTED
Resolution 3 Adoption of the Remuneration Report	53.67% support (46.08% against)	<ul style="list-style-type: none"> Norges Bank Investment Management (NBIM) voted in support California Public Employees Retirement System (CalPERS) voted in support California State Teachers Retirement System (CalSTRS) voted against NYC pension funds (new York City Board of Education Retirement, New York City Employees Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, Teachers Retirement System of the City of New York) voted against

RESOLUTION	VOTE RESULT	HOW INVESTORS VOTED
Resolution 4 Grant of performance rights to CEO Tim Ford	82.50% support (17.27% against)	<ul style="list-style-type: none"> NBIM voted in support CalPERS voted in support CalSTRS voted against NYC pension funds voted against

Protest votes

Two directors also received 'against' votes of more than 10% against their reelection:

- 22.38% of shareholders voted against the reelection of independent director (Chair of the Audit and Risk Committee and a member of the Nominations Committee) Antonia Korsanos
- 13.71% of shareholders voted against the reelection of Independent director (Chair of the Human Resources Committee and a member of the Nominations Committee) Lauri Shanahan.

[The Australian](#) reports that the key driver behind the vote 'against' Ms Korsanos' reelection was her connection to US casino group SciPlay – Ms Korsanos was appointed Chair of SciPlay Corporation in August 2022. In addition, Ms Korsanos is the Executive Vice Chair of Light & Wonder, Inc.

NBIM (which voted in support of all other directors), voted against Ms Korsanos' reelection seemingly over 'overboarding' concerns. NBIM [stated](#):

'Board members should devote sufficient time to fulfil their responsibilities effectively. The chairperson is responsible for leading all aspects of the board's work and should devote a significant amount of time to fulfil his or her responsibilities effectively. Board members should contribute to effective discussions and decision-making by attending all meetings'.

[Sources: Treasury Wine Estates Notice of Meeting; Results of meeting]



ESG

Supporting businesses to cooperate on environmental goals (without falling foul of competition laws): UK competition regulator launches new guidance

- One of the [three ways](#) that the UK Competition and Markets Authority (CMA) is seeking to 'promote environmental sustainability and help accelerate the transition to a net zero economy' is to ensure that competition law is not an unnecessary barrier to companies pursuing environmental sustainability initiatives.
- In line with this aim, and in response to industry feedback, the CMA has released new guidance – [Green Agreements Guidance](#) - on the application of competition laws to environmental sustainability agreements between businesses (competitors) operating at the same level of the supply chain.
- The new guidance [aims to provide](#)
'greater certainty about when agreements [between businesses] that genuinely contribute to addressing climate change will be exempt from competition law'.
- The regulator has also said it has adopted an open-door policy on the issue - that is, the regulator is open to providing firms, representative bodies such as trade associations, nongovernmental organisations and charities with informal tailored guidance.

[Source: CMA media release 12/10/2023]

O'Donnell v Commonwealth: Parties agree to settle landmark sovereign bond case

- Kathleen O'Donnell, a retail investor in Australian government bonds, commenced a class action against the Australian government in July 2020, claiming that the government misled investors by failing to disclose climate change risks in bond issue documents.
- Ms O'Donnell and the government have now agreed a settlement which was approved by the Court on 11 October 2023.
- As part of the settlement, government has published [a statement on the Treasury website](#) that includes an acknowledgement that climate change is a systemic risk that may affect the value of its government bonds. The statement reads:

[4] 'Climate change is a systemic risk that presents significant risks and opportunities for Australia's economy, regions, industries, and communities...Uncertainty around the magnitude and timing of the physical impacts of climate change and the global transition to net zero emissions translates to uncertainty about the fiscal impacts of climate change. And, as a consequence, there is uncertainty about whether the fiscal impacts of climate change may affect (if at all) the value of Commonwealth Government Securities (also known as Australian Government Bonds or AGBs) and, in turn, eAGBs'...

[9] 'The Commonwealth acknowledges that:

- a. As part of investors' strategic responses to the risks and opportunities presented by climate change, investors are making commitments to reduce emissions associated with their investment portfolios.
- b. Credit rating agencies and other stakeholders are increasingly examining the relationship between climate change and sovereign bonds.
- c. There is currently no internationally agreed framework for assessing any climate-related risks and opportunities associated with sovereign debt instruments.
- d. The Commonwealth will continue to engage with asset owners and relevant stakeholders to ensure that investors are informed as to the Commonwealth's policy settings and actions in relation to the risks and opportunities posed by climate change'.

- In exchange, Ms O'Donnell has agreed to discontinue proceedings against the government with no costs order.
- For more on this see:
 - [Australian and Pacific Climate Change Litigation \(unimelb.edu.au\)](#)
 - [O'Donnell v. Commonwealth - Climate Change Litigation \(climatecasechart.com\)](#)

- For more context, you can find MinterEllison's update on trends in Australian climate litigation here: [Climate litigation development: Australia leading the pack - Insight - MinterEllison](#)

[Source: Treasury Statement on O'Donnell v Commonwealth 16/10/2023]

NSW to legislate 2030 and 2050 emissions reduction targets, create a new monitoring body

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

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

Greens to support the Bill

In a [statement](#) NSW Greens MP and spokesperson for Climate Change Sue Higginson welcomed the introduction of the Bill, and expressed support for its passage but also expressed concerns that the proposed targets lack ambition. Ms Higginson stated:

'the unambitious targets they have set will result in hundreds of billions of dollars in costs for the people of NSW and risk destabilising the ecology and economy of the state...Global and domestic organisations of accredited scientists have made it clear that NSW and Australia must be more ambitious with our emissions targets and have called for us to be net zero by 2035 or 2040 by the latest. The Government's target of 50% by 2030 is inconsistent with international expectations and will lock in global temperature rises beyond 2 degrees Celsius...The Greens want this net zero bill to pass so we will work with the Government to make sure that happens. We welcome that there will be an inquiry into the bill because on all accounts the targets associated with this bill are less than ambitious and the details of the guiding principles need to be examined. It is important that NSW is given the best net zero targets possible and that the new Commission will be empowered to be effective and make strong recommendations'.

[Sources: Climate Change (Net Zero Future) Bill 2023 (NSW); Greens MP and spokesperson for Climate Change Sue Higginson media release 13/10/2023 [accessed via LexisNexis Capital Monitor]

Reclaim Finance criticises the French parliament over its 'Say on Climate' backdown

- Reclaim Finance has [criticised](#) the French parliament for dropping the 'Say on Climate' requirement – an obligation for companies to give their shareholders the opportunity to vote (on an advisory basis) on companies' climate transition plans – from the draft Green Industry Bill.
- Reclaim Finance considers the government has given in to pressure from lobby groups – in particular the French Association of Large Companies (AFEF) – over the measure, demonstrating its lack of 'political will' on the issue.
- Expanding on this, Antoine Laurent (Advocacy lead for Reclaim Finance) commented:

'Although the adopted amendment lacked the ambition and precision to provide a proper framework for Say on Climate votes Reclaim Finance had urged deputies to support it because it represented a useful step forward in favour of sustainable finance. It would allow investors who are committed to climate action to supplement their measures to exclude certain companies, by engaging and giving their opinion on the quality of the climate strategies put forward. Reclaim Finance calls on the assembly members who supported this amendment to continue their efforts to ensure that "Say on climate" becomes mandatory and that its content is regulated to prevent "greenwashing".'

[Source: Reclaim Finance media release 10/10/2023]

Postponed: South Korea delays introduction of ESG disclosure requirements until 'after 2026'

- The South Korean Financial Services Commission (FSC) Taskforce on ESG Finance [held its third meeting](#) on 16 October 2023. The focus of the meeting was on the approach to the introduction of ESG disclosure requirements into the domestic market.

- In opening remarks, FSC Vice Chairman Kim So-young reiterated the importance/value of introducing mandatory ESG disclosure requirements. Mr So-young also confirmed that:
 - ESG disclosure rules would 'take into account the standards set forth by major economies and international organisations and give ample considerations for particular characteristics of domestic market and businesses'.
 - A phased approach to implementation is planned – starting with large listed companies, before the requirement are expanded to smaller companies 'in a gradual manner'
 - From a compliance perspective – 'during the early stage, penalties for noncompliance will be kept to a minimum level'.
- Importantly, Mr So-young flagged that the planned introduction of ESG disclosure requirements will be delayed 'until after 2026' to 'allow sufficient time for business to prepare for the change'. For context, the regulator has [previously said](#) mandatory ESG disclosure requirements would be phased in for certain companies from 2025.
- As yet, no specific timeframe beyond 'after 2026' has been set. According to the [FSC's statement](#),
 - 'A specific timeline for introducing an ESG disclosure system will be determined in the future after coordinating schedule with relevant ministries'.

[Source: South Korean Financial Services Commission media release 16/10/2023]

Independent review of the Australian Climate Service announced

- The Federal government has [commissioned an independent review](#) of the Australian Climate Service (ACS).
- For context, the ACS collects information – drawing on the expertise of the Bureau of Meteorology, CSIRO, the Australian Bureau of Statistics and Geoscience Australia – used by the government to identify climate risks and assist in preparing for/responding to natural disasters. The purpose of the review is to help ensure that the necessary systems, resources and data required to understand, prepare and act on current and future climate risks are in place.
- The review will be led by former NSW Chief Scientist Professor Mary O’Kane (who will Chair the review panel). Ms O’Kane will be joined by panel members Daryl Quinlivan and Dr Russell Reichelt.
- The final report of the independent review will be delivered by the panel by the end of March 2024.

[Source: Joint media release: Senator the Hon Murray Watt, Minister for Agriculture, Fisheries and Forestry, Minister for Emergency Management and Senator the Hon Jenny McAllister, Assistant Minister for Climate Change and Energy 12/10/2023]

In Brief | Steel emissions: A report by IEEFA evaluating how five mining companies that supply raw materials for steelmaking plan to reduce their emissions identifies that two of these companies have no clear targets to cut their Scope 3 (value chain) emissions. These emissions have a huge impact on the climate, and IEEFA suggests these companies may face more scrutiny from investors who want them to achieve net zero by 2050

[Source: IEEFA media release 12/10/2023]

Financial Services

Top Story | Proposed reforms to the regulation of Australian payment systems

Consultation has opened on draft legislation that if enacted, would 'modernise' the regulation of payment systems in Australia by laying the groundwork to enable regulation of new (and future) payment methods.

You can find an expert overview of the key points on our website here: [Proposed reforms to the regulation of Australian payment systems - POST - MinterEllison](#)

Top Story | ASIC reiterates calls for insurers to prioritise 'the basics'

Key takeaways from ASIC Deputy Chair Karen Chester's 12 October 2023 address to the Insurance Council of Australia Conference.

Key Takeouts

- ASIC Deputy Chair Karen Chester [has again](#) called on insurers to prioritise acting to address ASIC's concerns in three key areas:
 - Ensuring delivery of pricing promises (and pricing transparency)
 - Compliance with design and distribution obligations (DDOs)
 - Claims handling
- ASIC considers that addressing these issues – 'getting the basics right' – to be:
 - 'an important prerequisite for insurers to have the latitude to explore innovative technologies and product design, artificial intelligence, and intelligent automation – which in turn will help them to address structural challenges facing the industry'.
- Ms Chester underlined the important role ASIC expects boards to play in ensuring the issues flagged are addressed effectively
- Ms Chester said that ASIC has proven itself willing to take action to enforce compliance and stands ready to take 'targeted enforcement action'

In her [12 October 2023 address](#) to the Insurance Council of Australia Conference Australian Securities and Investments Commission (ASIC) Deputy Chair Karen Chester reiterated previous calls for insurers to prioritise addressing ASIC's concerns in the three key areas (outlined below) as a necessary 'precursor' to addressing the various structural challenges facing the sector.

The key message underpinning the speech is that:

'...absent the right basics, aspirations can easily go awry (think AI, think product innovation). Or can prove elusive (think government policy intervention and investment). So today our focus remains on getting the basics right. And we think it ought to be yours, as a priority, and collectively so'.

1. Delivery of pricing promises

Addressing the issues identified in [ASIC report 765: When the price is not right: Making good on insurance promises \(REP 765\)](#) ([summarised](#)) was the first area flagged by the Deputy Chair.

Specifically, Ms Chester called on insurers to prioritise addressing these three areas of concern:

- 'unnecessary complexity in pricing promises and pricing practices'
- 'persistent underinvestment in product governance, systems, controls and data, including controls over product distributors'
- 'insurers' inaction over years to act on earlier risk flags'.

Ms Chester acknowledged the work already being undertaken by insurers– for example Ms Chester said that ASIC has observed insurers are creating centralised repositories for pricing promises and establishing dedicated roles assigned for reviewing pricing promises – but made clear that ASIC considers more work remains to be done.

In particular, Ms Chester observed that:

'Many insurers still have multiple and legacy systems outpaced by the complexity of their products and distribution channels. Underinvestment here will continue to get in the way of delivering on pricing promises'.

From an enforcement/compliance perspective, Ms Chester said that ASIC stands ready to take 'targeted enforcement action' to address potential misconduct where this is identified pointing to the regulator's record of doing so to date in illustration. Ms Chester also flagged that further insurance pricing investigations are underway.

Pricing transparency should be an area of continuing board focus

Looking ahead, Ms Chester said that ASIC has:

'broadened our focus to pricing transparency. Premium transparency is paramount for customers to clearly understand your promises. And to restore customer trust in its delivery'.

Ms Chester also emphasised ASIC's expectation that boards have an ongoing focus on the issue. Ms Chester said:

'Ultimately, there are four questions boards should be critically asking on pricing transparency – and regularly so – of management:

- Are we delivering our pricing promises and discounts?
- Is our pricing clear and transparent, and is the pricing system auditable? Can we follow the promise?
- Can our consumers see the promise delivery?
- Can they see the impact of any mitigation steps on their premium?'

2. DDO compliance

The second priority area identified was DDO compliance. Referencing [ASIC's initial insurance DDO findings](#) (which focused on product design and target market determinations (TMDs) ([summarised](#)), Ms Chester observed that ASIC

'found compliance with the obligations to be nascent at best...Many got the basics wrong. Target market descriptions were vague or overly broad. Most did not properly consider or explain how the product issuer considered a consumers' financial situation, objectives and needs'.

Ms Chester called on boards to consider the following three questions when monitoring the state of DDO compliance within their organisation:

- 'For each product, is our target market clear? Is it a real target or too broad?
- Are we confident the product will meet the financial situation, needs and objectives of people in the target market, and how do we test this regularly?
- How does the product account for the financial needs of distinct consumer cohorts residing within the target market, for example – flood or bushfire prone consumers, or low-income consumers?'

ASIC has proven itself willing to take action to enforce compliance

Ms Chester observed that DDO 'has become a "go to" regulatory tool and a compliance compass across ASIC', pointing to ASIC's record of issuing stop orders – including 39 interim stop orders in the insurance context – in support.

Ms Chester added that ASIC has commenced four civil penalty proceedings over alleged DDO breaches to date with other investigations on foot.

Looking ahead, Ms Chester said that ASIC will extend its focus to compliance with the 'reasonable steps' obligation (distribution) and will also focus on 'low value insurance products'.

Unfair contact terms

Ahead of upcoming changes to the unfair contact terms regime set to apply from November 2023 (see: [Beefed up unfair contract terms regime to commence next year - Insight - MinterEllison](#)) and in line with [ASIC's 2023 enforcement priorities](#), Ms Chester said that ASIC is also focused on unfair contract terms (UCT).

At this stage, ASIC is monitoring potential unfair terms relating to maintenance and 'wear and tear' in home insurance.

3. Claims handling

Addressing the five areas for improvement identified in [Report 768 Navigating the storm: ASIC's review of home insurance claims](#) (REP 768) ([summarised in Governance News 16/08/2023 at p17](#)) was the third priority area identified. To recap, these five areas are:

- – 'better communications to customers about decisions, delays, and complications
- – better project management and oversight of third parties
- – better recognition and handling of complaints and expressions of dissatisfaction
- – better identification and treatment of vulnerable consumers, and
- – better resourcing of claims handling and dispute resolution functions'.

On the issue of claims handling resourcing, Ms Chester emphasised ASIC's expectation that insurers

'further analyse the resourcing of claims handling and immediately address the identified under-resourcing of their complaints handling (dispute resolution) functions'.

From an enforcement perspective, Ms Chester stated that ASIC is 'actively monitoring claims handling practices' and has commenced 'several investigations' as well as undertaking 'supervisory work to identify and address inadequate internal and external dispute resolution arrangements this financial year'.

Ms Chester further observed that claims handling will be subject to parliamentary scrutiny by the House of Representatives Standing Committee on Economics inquiry into insurers' responses to 2022 major floods claims which is due to report by 30 September 2024. Among other things, the inquiry is expected to consider the timeframes for resolving claims and insurer communication with policyholders.

In addition, the inquiry will also consider ASIC's review of home insurance claims (Report 768) and the Insurance Council of Australia's (ICA's) external review of insurers' responses to the 2022 floods.

ASIC considers boards have a key role to play

In making these points Ms Chester underlined ASIC's expectations around the role boards are expected to play:

'...it's up to your boards to take 'whole of business' accountability for getting the basics right. And with that the trust of consumers, communities and government preserved. So, your aspirations – to do things better and differently – ought to be supported, secured and safe'.

[Source: Assistant Treasurer and Minister for Financial Services Stephen Jones Address to the Insurance Council of Australia Conference 12/10/2023]

Top Story | Proposed framework for regulating digital asset platforms released

Consultation has opened on a proposed framework for regulating digital policy platforms.

You can find an expert summary here: [Proposed framework for regulating digital asset platforms released - POST - MinterEllison](#)

Brief overview

The government has released a [proposal paper](#) outlining its proposed approach to addressing consumer harms in connection with crypto and digital assets.

Broadly, under the proposed approach:

- Digital asset platforms that hold over a certain threshold of Australians assets (\$1,500 for an individual; \$5 million in aggregate) would be required to obtain an Australian Financial Services Licence (AFSL) and meet all general licence obligations.
- Digital asset platforms would also need to meet specific obligations that take into account the nature of the platforms including: a) meeting minimum standards for holding tokens, b) meeting standards for custody software, and; c) standards when transacting in tokens.
- Certain digital asset activities – trading, staking, tokenisation and fundraising – would be subject to additional obligations.

The [fact sheet](#) accompanying the proposal paper provides a concise overview of each of the points.

The [proposal paper](#) states that the approach outlined has the following four key objectives:

- 'protecting consumers;
- promoting innovation through technology neutrality and regulatory clarity;
- aligning Australia's digital asset regulatory framework with international jurisdictions, where appropriate; and
- utilising regulatory tools that provide agility, flexibility, and adaptability'.

Announcing the consultation, government emphasised the consumer protection aspect of the proposed reforms. [summing up](#) the purpose of the reforms as follows:

'reduc[ing] the risk [to Australian consumers] of these collapses [ie the collapse of crypto exchanges] happening by lifting the standard of the operation of platforms and increasing oversight'.

Next steps

- The due date for submissions is 1 December 2023.
- Further consultation on draft legislation is expected to be released next year.
- It's envisaged there will be a twelve month transitional period following the enactment of legislation.

[Sources: Joint statement: Treasurer Jim Chalmers and Assistant Treasurer and Minister for Financial Services Stephen Jones 16/10/2023; Treasury consultation: Regulating digital asset platforms 16 October 2023 - 01 December 2023; Proposal paper; Fact Sheet]

ASIC Chair outlines the case for strong crypto regulation and enforcement to protect against consumer harms

In his [16 October 2023 address](#) to the AFR Cryptocurrency Australian Securities and Investments Commission (ASIC) Chair Joe Longo made the following points.

'Clear case for strong regulation'

- Mr Longo said he believes there to be a 'clear case for strong regulation [which is to say crypto – excluding distributed ledger technology, tokenisation, or central bank digital currencies] supported by effective enforcement' to better protect investors.
- Ultimately, Mr Longo's view is that regulation is justified because of the extent to which 'crypto relies on unregulated trust' (and more particularly the level of trust placed in intermediaries). Mr Longo observed:

'many of the purported benefits of crypto, such as 'trust-lessness', from a user's perspective, are lost. It is not always clear to customers that intermediaries aren't generally regulated for their crypto activities. Nor do they always provide the consumer protections normally expected when dealing with what appears to be a financial services business. The "crypto winter" that followed the collapse of Terra / Luna and FTX is good evidence of just how much trust is placed in intermediaries – and just how dangerous that can be when things go wrong...customers trust these entities with their money.'

- As such, Mr Longo's view is that crypto should meet the same standards that apply to more traditional financial products. Mr Longo observed:

'We shouldn't think crypto is somehow outside traditional standards. Offering services that involve new and innovative technologies, or that are built around new and innovative technologies, doesn't afford service providers a regulatory exemption...We won't hesitate to act on any cases we think involve financial products that seek to avoid current regulatory standards. Crypto must be held accountable to the same high standards we expect of everyone else'.

ASIC is focused on ensuring compliance with existing laws

- In light of this, to the extent that crypto falls within ASIC's existing remit, Mr Longo emphasised that ASIC stands ready to take action to ensure compliance with existing laws.
- Mr Longo also underlined that businesses bear responsibility for determining whether they are offering financial products or financial services (and therefore need a licence) – 'If you are offering such products, it's your responsibility to get a licence or seek relief from the financial services regime' Mr Longo observed, pointing to [Information Sheet 225](#) as a source of guidance on this issue.

Future crypto regulation: 'ASIC needs access to the same – or similar – tools as we have for other products and related services'

- Mr Longo acknowledged that some aspects of crypto 'don't fit neatly' into the existing regulatory framework for financial products/services and that these differences mean that 'when crypto is regulated, there will need to be some tailoring of the existing regulatory framework'.
- Referencing the [government's consultation paper](#) on the future regulation of crypto asset service providers (covered separately above), Mr Longo said that the 'consultation is an opportunity to design a framework that's fit

for purpose' underlining that 'whatever regulatory model the Government decides is appropriate, ASIC needs access to the same – or similar – tools as we have for other products and related services.'

- Mr Longo emphasised that the introduction of crypto regulation will entail a shift in approach for many crypto businesses:

'The most comprehensive regulatory framework in the world would be incomplete without strong enforcement to support it...There is anecdotal evidence that some in the crypto industry are keen to be regulated to enhance their standing and credibility. But credibility doesn't come just from being subject to regulation. It comes from compliance with the law. And compliance is not simply a box-ticking exercise. Some of you will need to fundamentally change how you do business in order to achieve compliance. Also, importantly, I want to stress that creating a culture of compliance means putting the consumer first. that should underpin every aspect of what you do. ASIC will take action within our regulatory mandate; we are after all, a law enforcement agency. We will not hesitate to act where we see harm – the likelihood of which is heightened by the risky nature of crypto-assets'.

Regulation (backed by enforcement) is 'not a panacea'

- Mr Longo also emphasised the 'inherently risky and complex' nature of crypto investing for consumers, noting that 'regulation and enforcement are not a panacea. They do not and cannot eliminate all risk for consumers'.
- For now, Mr Longo said that

'real consumer consequences of crypto activity remain ASIC's focus. Key risks remain unresolved, like the selling of potentially inappropriate products and services to customers; the appropriate safekeeping of customer assets; and the use of crypto-assets in scams'.

[Source: Speech by ASIC Chair Joe Longo at the Australian Financial Review (AFR) Cryptocurrency Summit, Crypto-assets: The case for strong regulation and enforcement, 16/10/2023]

Finding solutions to affordability and accessibility challenges facing the insurance sector needs collaboration says APRA

In her 12 October 2023 [address](#) to the Insurance Council of Australia Annual Conference Australian Prudential Regulation Authority (APRA) member Suzanne Smith spoke about the need for collaboration to find solutions to the complex affordability and accessibility challenges facing the sector.

Ms Smith also called on insurers to focus on uplifting risk their risk management capability ahead of/in line with the introduction of new requirements (new APRA prudential standard CPS 230 and the Financial Accountability Regime (FAR)).

Our takeaways are below.

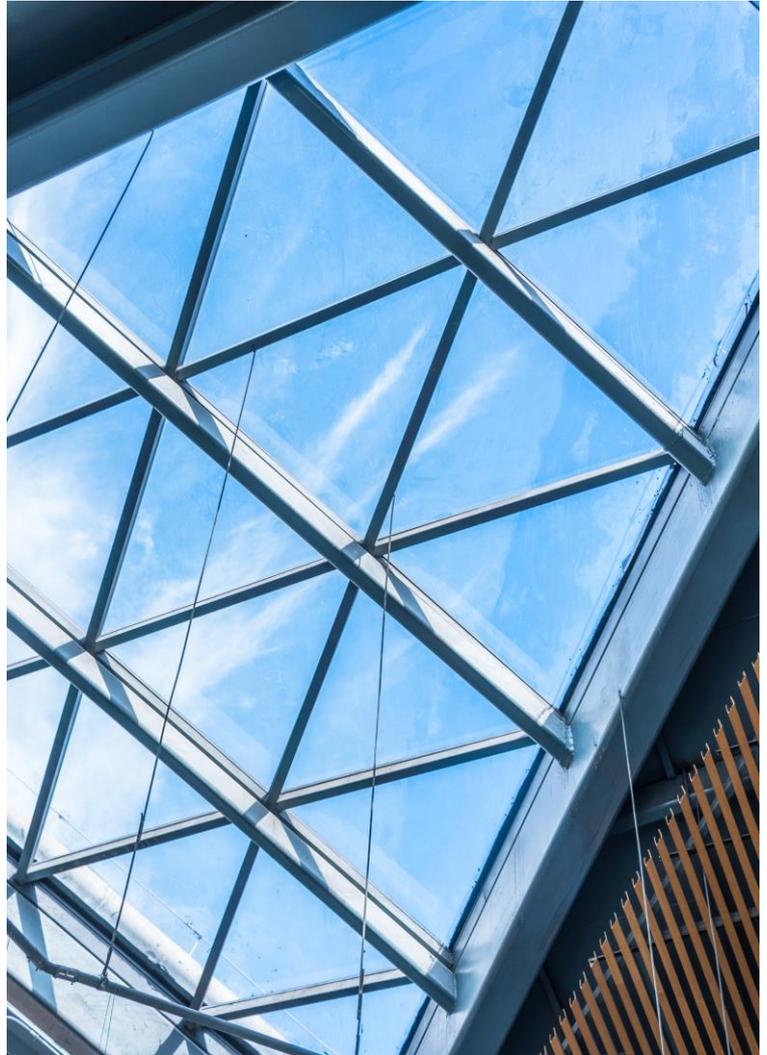
Collaboration is needed to find solutions to the affordability and accessibility challenges facing the sector

- Ms Smith observed that from a prudential standpoint APRA wants the insurance sector to be strong – ie to ensure insurers are able to meet their obligations, for example, in the wake of disasters such as the recent flooding events in NSW and QLD – while at the same time, being aware that insurers 'will withdraw products or exit the market altogether if they believe the benefits are not worth the risk', an issue that is also of concern for the regulator.
- Ms Smith said that APRA is 'increasingly uncomfortable with the widening insurance gap being created by declining availability and affordability' because 'if a growing number of households and businesses are underinsuring, self-insuring, or not insuring at all, it undermines economic growth as well as the community's ability to bounce back from catastrophes'.
- Ms Smith identified a number of factors contributing to these challenges including: climate related events, inflation and higher reinsurance costs.
- Ms Smith said that finding a 'solution' to these challenges necessarily entails insurers, government and regulators 'working together'. Pointing to the history of insurers engaging with the regulators and with government through the Insurance Council of Australia and the National Insurance Brokers Association, Ms Smith acknowledged that this is 'not a novel concept'. However, Ms Smith suggested there is scope to enhance this engagement especially in the context of: 'sharing data and insights which can help to ensure insurers are adequately prepared to respond promptly and efficiently to claims, catastrophes and emerging trends'.

- Ms Smith gave a number of examples of the work already being undertaken including:

- the work of the Hazards Insurance Partnership (HIP): HIP is (among other things) working to create a national insurance dataset. Work is also being undertaken by the HIP Technical Working Group to explore how existing sources of industry data can be leveraged to build an interim or short-term data asset that could 'help better understand insurance and risk'.
- APRA's work to enhance its strategic data collections through the Insurance Data Transformation Program. Ms Smith said that APRA envisages that the 'the types of regulatory insights from the strategic collections will include how insurers are responding to affordability and availability issues, understanding which policyholders are affected and the drivers of these issues, including claims outcomes'. These strategic collections are also expected to contribute to the centralised data asset to support the work on insurance affordability and availability being progressed by the HIP.
- General Insurance Climate Vulnerability Assessment (CVA): This CVA looks specifically at the potential price response of Australia's largest insurers under different climate scenarios to 2050 with a view to both: a)

understanding the long term impacts of physical and transition climate change risk on the affordability of household insurance; and b) enabling APRA to better understand how insurers and reinsurers might respond. The exercise is also expected to provide insights into how the availability of insurance varies across regions, over time and under different climate scenarios.



Uplifting risk management capability

- Ms Smith also underlined APRA's focus on lifting standards of risk management, in light of the challenges facing the sector. This includes ensuring industry is prepared for APRA's new prudential standard on operational resilience [CPS 230](#) (set to commence from July 2025) and the new Financial Accountability Regime (FAR) which will apply for insurers from 15 March 2025.

[Note: For more on CPS 230 see: [APRA's new operational risk standard finalised - POST - MinterEllison](#); and [CPS 230: The Practical Playbook - Insight - MinterEllison](#)]

[Note: For more on the Financial Accountability Regime (FAR) see: [FAR status update: FAR Bills now law - POST - MinterEllison](#); and [FAR update | ASIC and APRA release information package - POST - MinterEllison](#)]

- Ms Smith said that APRA intends to 'undertake targeted engagement' with insurers ahead of the CPS 230 commencing, adding that APRA expects insurers to be proactive in their preparations to meet the new requirements. Ms Smith observed:

'The scale of the potential challenge can be seen when we look at how the financial sector has complied – or not – with our prudential standard on information security. Recent analysis shows that many entities are struggling to meet their minimum requirements. Given the prevalence of cyber risk, this is not something we are prepared to tolerate any longer, with additional capital requirements of the kind imposed on Medibank'.

- On preparing for FAR: Ms Smith said that APRA and ASIC plan to release further information and guidance packages over 'the rest of this year and early next year that will have more specific content for the insurance and

superannuation industries'. Ms Smith added that the ASIC and APRA also intend to engage with the ICA on FAR 'shortly' and will host some industry based FAR webinars 'from late 2023'.

[Source: APRA executive board member Suzanne Smith, Speech to the Insurance Council of Australia annual conference 12/10/2023]

Australia's major banks pass 'severe but plausible' stress tests, but no room for complacency says APRA Chair

Key Takeouts

- APRA Chair [says](#) that the recent ADI stress test (the results of which are planned to be released next year) show that
 - 'no banks breached their prudential requirements on capital'
 - 'all retained sufficient liquidity and banks continued to provide credit to households and businesses'
- Despite this, APRA considers there is no room for complacency.
- In response to lessons learned from recent overseas bank collapses, APRA is seeking to strengthen the Australian banking system against future shocks including through:
 - 'reinforcing areas of the framework where we can further solidify foundations, including requirements around liquidity and interest rate risk. We are also assessing the effectiveness of Additional Tier 1 (AT1) instruments designed to stabilise a bank in stress or support resolution in the event of failure'.

Our key takeaways from Australian Prudential Regulation Authority (APRA) Chair John Lonsdale's 12 October 2023 address to the Citi Australia and New Zealand Investment Conference, entitled [Aftershock: lessons from a real-life banking stress test](#) are below.

Lessons from recent bank collapses overseas

- Mr Lonsdale reflected on the lessons learned from the sudden collapse of four overseas banks six months ago, the implications for the Australian banking sector and some of the steps APRA is taking to strengthen the banking system to withstand future shocks. Mr Lonsdale described these events as the 'most significant system-wide banking stress event since the global financial crisis (GFC)'.
- Mr Lonsdale observed that unlike the GFC, none of the failed banks was considered 'especially significant to systemic stability' ahead of their collapse, yet despite this, their failure 'sent shockwaves around the global banking system'.
- A key lesson to emerge from these events, Mr Lonsdale said, is the speed at which a bank run can now take place and spread to other institutions, meaning that 'even banks that aren't considered "systemically important" can undermine confidence in and stability of the financial system should they fail.'
- Mr Lonsdale identified 'poor risk management' at board/leadership level as a leading cause of the Silicon Valley Bank (SVB) collapse:
- Mr Lonsdale also identified the following as additional contributing factors that left the bank 'unusually vulnerable to the fastest bank run we've ever seen':
 - 'SVB mismanaging its interest rate exposures, leading to large unrealised losses that required an equity raise when these losses started to be realised;
 - a highly concentrated, tech-savvy depositor base that fled when it became apparent the bank would have to realise these losses that sat in their liquid asset portfolio; and
 - the fact that almost 95% of the bank's deposits were above the \$250,000 limit of the US Government's bank guarantee, and therefore uninsured'.

Australian banks are in a strong position

- Mr Lonsdale offered some initial insights into the (as yet to be released) results of the recent ADI stress test which he said would (once released 'early next year') offer further confirmation that Australia's bank capital framework is working effectively (and Australian banks remain safe).
- Mr Lonsdale said that:
 - Eleven large banks took part in the test which was conducted using the new bank capital framework that took effect this year.



- The 'severe yet still plausible' scenario used was a severe downturn featuring high inflation, unemployment rising to 10% and house prices falling by more than a third.
- Mr Lonsdale said that the results will show that:
 - 'no banks breached their prudential requirements on capital'
 - 'all retained sufficient liquidity and banks continued to provide credit to households and businesses'

No room for complacency

- Despite the fact that Australian banks are subject to more stringent regulatory requirements (especially in relation to capital and liquidity) and do not have 'anything remotely approaching SVB's level of uninsured deposits' Mr Lonsdale underlined that Australian banks are not

"immune from the same types of contagion risks that we saw spread from America to Europe. The crisis provided important insights regarding the global regulatory framework for banks. While some of the subsequent strengthening work is happening through multilateral forums, APRA has also embarked on a program of policy revisions to incorporate learnings from the turmoil'.

Three areas where APRA will seek to strengthen bank resilience:

- **APRA to consult on updates to APS 210:** Given the speed at which bank runs can occur, Mr Lonsdale observed that 'even the largest, most financially resilient and best resourced banks' would struggle to cope, with the challenge even greater for smaller banks. In light of this, and in light of the impact that the failure of a smaller banks can have on broader system stability, Mr Lonsdale said that APRA plans to commence consultation to update our prudential standard on bank liquidity (APS 210). Mr Lonsdale said that:

'The consultation is examining targeted changes to the simpler minimum liquidity holdings (MLH) approach used to calculate the requirements for smaller banks, which stands in contrast to the more complex and sophisticated liquidity coverage ratio (LCR) used by larger banks. Our goal is to ensure all banks reflect the market value of their liquid assets for regulatory purposes and don't get caught short in the way SVB did. In addition, to reduce contagion risk across the system, we will be examining where banks are holding each other's securities for liquidity purposes. A more complete review of the liquidity standard for banks has been pushed back to next year'.

- **Interest rate risk:** Mr Lonsdale said that in response to 'lessons learned from the March stress event, we have examined the calibration of the IRRBB standard and are now in the throes of finalising an updated version. This will include a proportionate focus on smaller banks, confirming that APRA expects them to have an appropriate interest rate framework tailored to their own risks and management awareness'.
- **Assessing the effectiveness of Additional Tier 1 (AT1) instruments:** Mr Lonsdale observed that 'A third issue exposed by the collapse of SVB and Credit Suisse is that some of the key crisis response tools that banks, regulators and Governments can call on in such moments were not sufficient. For example, in Switzerland, Credit Suisse's AT1s did not absorb losses early enough, in part due to concern that publicly signalling the bank's distress would worsen the situation. This contributed to APRA's concerns that these instruments may not work as intended to help mitigate or resolve a future Australian bank crisis. As a result, last month we commenced a conversation with the banking industry and investors about how to improve their effectiveness as a crisis management tool'.

Importance of proactive supervision/early detection

- Mr Lonsdale said that the speed of SVB's collapse also underlines the important role proactive supervision (by regulators) plays. Mr Lonsdale observed:

'The speed at which events unfolded this year has also refocused attention on the importance of prevention, through proactive supervision and sound risk management, rather than cure, through reactive recovery or resolution. The risks faced by the banks which failed were not unknown. Bank supervisors in both jurisdictions had identified the prudential risks these institutions faced and warned them accordingly. SVB had 31 open supervisory findings against it when it failed, which is about triple the number observed at peer firms. But these warnings didn't drive sufficient change at either bank to protect them in a stress scenario.

A lesson for APRA's supervisors here then is the importance of continued strong and effective supervision, which not only identifies weaknesses but takes and enforces prompt action to address them. I can assure our regulated entities that APRA will continue to use its full suite of supervisory and enforcement tools to ensure

poor risk management practices are addressed in a timely manner. In recent years this has included the application of material capital or liquidity add-ons where appropriate, alongside other public enforcement actions and, of course, ensuring that accountability is where it needs to be'.

- **APRA's remains focused on prevention (rather than response):** Mr Lonsdale said that a focus on 'disaster prevention, rather than disaster response, informs APRA's approach to macroprudential policy' (including assessing risks in the residential mortgage sector'. On this point, Mr Lonsdale confirmed that APRA considers that given the uncertainties in the economic environment, housing market and geopolitical sphere, the existing 3% serviceability buffer remains appropriate.
- **Boards have a key role to play** in ensuring continuing confidence in Australia's banking system: Mr Lonsdale said that:

'To ensure Australia's banking system is equipped for this new reality, APRA will continue to press boards to lift their standards of risk management, and is prepared to act promptly, and forcefully if necessary, to rectify weaknesses ahead of serious problems emerging. As our policy agenda evolves in response to developing risks, we will also look to respond in a way that enables competition while recognising that all banks are significant to financial system stability'.

[Source: APRA Chair John Lonsdale, Speech to Citi Australia and New Zealand Investment Conference, Aftershock: lessons from a real-life banking stress test 12/10/2023]

In Brief | Enforcement is a strong focus in ASIC's 2022-23 annual report with the report. Key outcomes highlighted include: ASIC's first enforcement action over (alleged) greenwashing, exercising DDO powers to target poorly designed products, reviewing businesses' cyber resilience practices and focusing on scam prevention and detection by the major banks

[Sources: ASIC media release 13/10/2023; ASIC 2022-23 Annual Report]

In Brief | APRA has released its 2022-23 annual report highlighting the actions taken to maintain 'the safety and soundness of Australia's financial institutions' over the past year. The report highlights examples of ASIC's work to manage the financial and operational resilience of APRA-regulated entities and to protect depositors, insurance policyholders and superannuation members over the period.

[Source: APRA 2022-23 annual report]

Risk Management

Falling short on tackling online child sexual exploitation and abuse: eSafety Commissioner releases second report highlighting 'serious shortfalls' in how large tech companies are tackling the issue

- On 22 February 2023 eSafety issued legal notices to five large technology companies - Twitter (now X), Google, TikTok, Twitch - requiring them to detail steps they are taking to detect and address online child sexual exploitation and abuse.
- The eSafety Commissioner has now [released a report](#) ([eSafety Commissioner's summary of key findings here](#)) summarising the responses to these questions.
- Overall, the report highlights 'serious shortfalls' in how five companies 'detect, remove and prevent child sexual abuse material and grooming' as well as 'inconsistencies in how [they]...deal with this material across their different services and significant variations in the time it takes them to respond to public reports'.
- This latest report follows the release of a separate report highlighting similar shortfalls in the way a number of other technology companies - Apple, Meta, Microsoft, Skype, Snap, WhatsApp and Omegle – deal with the issue
- [Announcing](#) the findings eSafety Commissioner Julie Inman Grant underlined the importance of transparency around the steps companies are taking and expressed concern that notices (issued by the eSafety Commissioner to provide these details) had not been fully complied with in some cases, as well as concerns around the issues identified in the information that was supplied.
- Ms Inman observed that from 2024,
['industry codes and standards](#) [will be] in place which work hand-in-hand with these Basic Online Safety Expectations transparency powers to ensure companies are living up to these responsibilities to protect children.'

[Source: eSafety Commissioner media release 16/10/2023]

Strengthening privacy protections | Government reiterates it will work closely with small business on uplifting cyber security capability and support the sector in transitioning to new settings

The [Privacy Act Review Final Report](#) put forward 116 proposals for reform of Australia's privacy framework, These included a proposal that the small business exemption (which, subject to certain exceptions, currently exempts businesses with an annual turnover of \$3 million or less from the operation of the Privacy Act) be removed (following consultation with the sector) (P6.1).

The [government has agreed in-principle](#) to this proposal. In its response the government stated that the (potential removal or modification of the small business exemption will only occur after:

...'further consultation has been undertaken with small businesses and their representatives on the impact that removing the small business exemption would have. This would inform consideration of what privacy obligations should be modified for small businesses to ease the regulatory burden and what support small businesses would need to adjust their privacy practices to facilitate compliance with new privacy obligations.... the Government will continue to work closely with small businesses and their representatives to understand the impact of any proposed changes. This will inform the development of new legislated privacy obligations and dedicated supports for small businesses to assist affected businesses to comply with proposed changes...The removal of the small business exemption should also be subject to an appropriate transition period to ensure small businesses are in a position to comply with new obligations'.

For more on the Government's response to the Privacy Act Review proposals see: [The long road to Australian privacy reform - Insight - MinterEllison](#)

In a [17 October 2023 opinion piece](#), Minister for Small Business Julie Collins reiterated that the government plans to work closely with the small business sector every step of the way as we transition to the new settings', adding that any changes will only be implemented following industry consultation and after a transition period to ensure small businesses have reasonable time to prepare.

Ms Collins also announced \$23.4 million in new funding to assist small businesses to upskill in cyber security and 'adapt to the digital economy'. This will be used to fund the expansion of the existing Cyber Wardens program (run by the Council of Small Business Organisations Australia).which aims to help small businesses build their resilience to cyber security attacks.

The Minister also noted that the government has delivered \$18.6 million to help support small businesses adapt and build resilience through digital technology through the latest round of Digital Solutions.

[Source: Minister for small business Julie Collins opinion piece 17/10/2023]

In Brief | Promoting competition and protecting consumers in digital platform markets: ACCC Chair Gina Cass-Gottlieb has given a speech reiterating the need to implement the regulatory reforms proposed by the regulator to address competition and consumer concerns the ACCC has identified through its digital platforms work – 'The regulatory reforms we've proposed will ensure Australia can embrace the opportunities offered by digital platform services and respond to current and future challenges as they arise' Ms Cass-Gottlieb said

[Source: Speech by ACCC Chair Gina Cass-Gottlieb at the KWM Digital Future Summit 2023 17/10/2023]

In Brief | UK government announces Eleanor Lyons (current Deputy Children's Commissioner) has been appointed to the role of Independent Anti-Slavery Commissioner for three years. Responding to the announcement, Every Child Protected Against Trafficking (ECPAT) welcomed the appointment as overdue, given it has been vacant for 18 months

[Sources: UK Government announcement 11/10/2023; ECPAT media release]

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