Governance News

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

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Meetings and Proxy Advisers

ASX avoids second strike

The ASX Ltd AGM was held on 19 October 2023. All proposals were carried, though the exchange narrowly avoided a 'second strike' against the remuneration report.

> [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).]

The table below provides a snapshot of the voting outcome on the remuneration-related proposals and an indication of how some investors voted. Interestingly, while there was a strong 'against' vote for the remuneration report, the proposal to approve CEO incentives secured strong support.

PROPOSAL	VOTE RESULT	HOW (SOME) INVESTORS VOTED
Proposal 3 in the Notice: Approve Remuneration Report	▪ 75.82% support (23.16% against)	▪ Legal and General Investment Management (LGIM) voted against citing concerns over some aspects of the design of incentives and (perceived) lack of transparency, as well as (what LGIM perceives to be) a lack of appropriate recognition of the paused CHESS replacement project and the challenges facing the exchange. The rationale given is as follows: 'A vote against is applied as the level of disclosures in respect of performance conditions does not allow shareholders to make a fully informed assessment of remuneration. Remuneration: Quantum: A vote against is applied as the changes to the Chief Risk Officer's salary would significantly increase total pay. A vote AGAINST the remuneration report is warranted. The following concerns continue to be identified:- Poor, inferior and absent disclosure of quantified and specific performance targets in the STVR performance targets, weightings and outcomes, which shareholders would typically expect for justifying bonus determinations and to understand target rigor.- Use of 'underlying NPAT' in determining bonuses, noting the FY23 Underlying NPAT did not appear to recognize the pausing of the CHESS replacement project and the significant impact on profitability of the derecognition charge, being misaligned with the company's performance and shareholder expectations.- Bonus opportunities have been increased substantially, being inconsistent with the company's performance and shareholder returns, including,- A decrease in the FY24 STI opportunity appears more than offset by a material increase in the CEO's FY24 LTI.- Other executives which were previously ineligible for LTVR awards, are now being granted LTVR opportunities from FY24, significantly increasing remuneration. In this regard, the company has provided no explanation of the LTIs being offered, while there is no disclosure of a reduction in STI opportunities.- The rigour of the Underlying ROE measure in the FY24 LTVR grant may be questioned given the company's disclosure of underlying ROE of 13.1 to 14.0 percent in the period between FY20-FY23, being well within the FY24 LTI underlying ROE target range of 13.0 to 14.5 percent. ▪ 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

PROPOSAL	VOTE RESULT	HOW (SOME) INVESTORS VOTED
		York City Police Pension Fund, Teachers Retirement System of the City of New York) voted against
Proposal 4 in the Notice: Approve grant of performance rights to the Managing Director and CEO Helen Lofthouse.	▪ 93.37% support (2.60% against)	▪ LGIM voted in support ▪ NBIM voted in support ▪ CalPERS voted in support ▪ CalSTRS voted in support ▪ NYC pension funds voted in support

Why the strong 'against' vote?

As flagged, LGIM voted 'against' the remuneration report citing concerns over some aspects of the design, application and communication around incentives as well as concerns that the pausing of the CHESS replacement project had not been appropriately reflected.

Ahead of the meeting, the Australian Shareholders Association (ASA) recommended shareholders vote down the report chiefly over concerns about the design of the Short Term Incentive (STI) plan. The ASA writes:

> 'ASX STI does not meet the ASA guideline that "remuneration report should be readable, transparent and understandable for investors." And, in the circumstance of a company embarking on a new direction, as ASX is, the STI has a critical role in aligning company leadership with that future. The STI is the primary reason ASA has voted against the remuneration report for the last 2 years and for the reasons above ASA will again vote undirected proxies against'.

It's unclear whether other investors who opposed the remuneration report shared these concerns.

Director elections

All directors standing for election/re-election were duly elected including ASX Chair Damien Roche (who was elected for a final term) with 90.44% support.

[Sources: ASX Ltd Notice of meeting; Results of AGM 19/10/2023]

Disclosure and Reporting

Top Story | Another step closer towards implementing mandatory climate disclosure in Australia

The AASB has released draft climate reporting standards for consultation. Here are the key takeaways.

Key Takeouts

- 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 - Technical update - MinterEllison
- 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.
- Subject to the passage of the necessary legislation, it's envisioned that the new AASB standards (once finalised) will apply for certain entities from 1 July 2024.

Moving towards mandatory climate reporting – the story so far…

Australia is following many other jurisdictions in progressing the introduction of ISSB-aligned mandatory sustainability disclosure standards, with a focus initially on climate-related disclosure.

An initial round of consultation (read Moving closer to introducing internationally-aligned climate reporting requirements in Australia: Initial consultation launched) on the proposed approach to developing the new standards closed in February 2023. A second round of consultation seeking feedback on a number of proposals around implementation with a focus on which entities will be required to report and when closed in July 2023 (read: Introduction of mandatory climate reporting in Australia: Second round of consultation launched - Technical update - MinterEllison).

The specific content of the new disclosure requirements will be set out through new Australian Sustainability Reporting Standards (ASRS), currently under development by the Australian Accounting Standards Board (AASB).

AASB draft standards released

On 23 October 2023, the AASB released three draft Australian Sustainability Reporting Standards (ASRS) for consultation based on IFRS S1 and IFRS S2:

- Draft ASRS 1 General Requirements for Disclosure of Climate-related Financial Information (based on IFRS S1)
- Draft ASRS 2 Climate-related Financial Disclosures (based on IFRS S2)
- Draft ASRS 101 References in Australian Sustainability Reporting Standards (a proposed 'service standard' which lists the relevant versions of any non-legislative documents published in Australia and foreign documents that are referenced in the ASRS standards).

What will entities be required to report?

Consistent with the approach foreshadowed in Treasury's second round consultation paper, in-scope entities (required to report under the Corporations Act 2001 (Cth)) are proposed to be required to disclose information about: their climate-risk governance arrangements; qualitative scenario analysis; climate resilience assessments against two possible future states, transition plans, climate-related targets, identification and management of climate-related risks and opportunities, and greenhouse gas (GHG) emissions (with reporting of Scope 3 emissions and marked-based Scope 2 emissions to be phased in over time).

The draft ASRS standards are not proposed to be identical to the ISSB standards

Though based on IFRS S1 and IFRS S2, the draft ASRS standards have been modified in a number of respects to reflect Australian conditions and in line with the government's stated policy approach (as set out in the second round consultation paper).

Some of the key differences between the IFRS standards and the draft ASRS standards include the following.

Limiting the scope of proposed disclosure to climate change only

In line with the government's policy of addressing climate-related financial disclosures first, the AASB is proposing to explicitly limit the scope of disclosure requirements to climate-related financial disclosures only (rather than sustainability related financial disclosures more broadly).

In line with this approach, all references to 'sustainability' related disclosures in draft ASRS 1 have been replaced with 'climate'.

Draft ASRS 2 is also proposed to be explicitly limited to climate-related risks and opportunities related to climate change and 'does not apply to other climate-related emissions (eg ozone depleting emissions) that are not greenhouse gas (GHG) emissions'.

The AASB's intent is that the draft standards

> 'can, at least initially, be applied independently of any broader sustainability reporting framework. This approach would permit additional time to consider the development of reporting requirements for other sustainability-related matters in Australia over time'.

No requirement for entities to consider the applicability of the SASB standards

The proposed ASRS standards omit all references to the Sustainability Accounting Standards Board (SASB) standards.

> [Note: For context, the SASB Standards are industry-specific standards (setting out industry-specific disclosure topics and metrics) which, as of August 2023, are being maintained/administered by the ISSB. Under IFRS S1 and IFRS S 2 companies will need to consider the SASB standards to identify their sustainability related risks/opportunities (IFRS S1) and when making industry-specific disclosures (under IFRS S2)]

Instead it's proposed that if an entity proposes to make industry-based disclosures, the entity should:

> 'consider the applicability of well-established and understood metrics associated with particular business models, activities or other common features that characterise participation in the same industry, as classified in ANZSIC' ie Australian and New Zealand Standard Industrial Classification (ANZSIC) issued by the Australian Bureau of Statistics.

This is because the AASB considers that it would not be appropriate include references to SASB Standards, or to publish the industry-based guidance accompanying IFRS S2, 'until the content has been comprehensively internationalised by the ISSB and has undergone the AASB's own due process'.

Disclosure required where entities assess their climate risks are not material

The AASB also proposes that if an entity determines that there are no material climate-related risks/opportunities that could reasonably be expected to affect its prospects, the entity would need to disclose this and explain the basis for this assessment.

There is no corresponding requirement in IFRS S1.

Scenario analysis

IFRS S2 does not prescribe the number of scenarios an entity is required to assess.

Under the draft ASRS standards, it's proposed that entities would be required to disclose their climate resilience assessments against a minimum of two possible future states one of which would need to be consistent with the goal of limited global temperature increase 1.5°C above pre-industrial levels.

The AASB does not propose to specify the upper-temperature scenario that an entity must use in its climate-related scenario analysis because 'scenarios used in assessing physical risk would depend on the entity's facts and circumstances, including the nature and location of its operations'.

The ASSB considers that:

'Specifying the minimum number of scenarios and the lower-temperature scenario to assess against is expected to enhance comparability of entities' climate resilience, particularly on transition risk'.

Greenhouse Gas (GHG) Disclosures

Converting greenhouse gases into a CO2 equivalent value

IFRS S2 requires entities to convert greenhouse gases into a CO2 equivalent value using global warming potential (GWP) values based on a 100-year time horizon from the latest Intergovernmental Panel on Climate Change (IPCC) assessment available at the reporting date. This means that if an entity is preparing climate-related financial disclosures for the period beginning 1 July 2024, under IFRS S2 the entity would be required to convert greenhouse gases using the GWP values in the IPCC 6th assessment report (AR6).

However, in the Australian context, entities reporting under the National Greenhouse and Energy Reporting Act 2007 (Cth) and related regulations (the NGER Scheme legislation) would be required to use the GWP values in the IPCC 5th assessment report (AR5).

To address this issue (and lessen the reporting burden for Australian entities), it's proposed that Australian entities would be required to convert greenhouse gases using GWP values in line with the reporting requirements under the NGER Scheme legislation.

Scope 3 emissions reporting relief

It's proposed that:

- entities would be permitted to disclose Scope 3 emissions in the current reporting period using data for the immediately preceding reporting period, 'if reasonable and supportable data related to the current reporting period is unavailable'.
- entities would also not be required to categorise the sources of Scope 3 emissions in accordance with the 15 categories in the GHG Protocol Standards (as required under IFRS S2). Rather, the AASB proposes to include the Scope 3 GHG emission categories in IFRS S2 as examples of categories entities could consider when disclosing the sources of its Scope 3 GHG emissions. This is because the:

  '15 categories of Scope 3 GHG emissions are not referenced by IPCC guidelines or the Paris Agreement. The AASB is unsure whether requiring categorisation of the sources of Scope 3 GHG emissions under the 15 categories would achieve international alignment if entities in other jurisdictions are able to disclose different categories'.

Use of non-Kyoto carbon credits

To ensure that non-Kyoto Australian Carbon Credit Units (ACCUs) could be recognised as carbon credits (in the context of draft ASRS 2) it's proposed that the definition of carbon credit in draft ASRS 2 would make clear that ACCUs meet the definition.

Financed emissions

Under IFRS S2 certain entities (eg asset managers, commercial banks, insurers) are required to provide additional disclosures taken from the Greenhouse Gas Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard (2011) relating to their financed emissions

However, the AASB considers that

'entities that apply methodologies set out in NGER Scheme legislation to measure their Scope 1 and Scope 2 GHG emissions may not have the information necessary for those disaggregated disclosures'.

In light of this, it is proposed that Australian entities would only need to consider the applicability of these additional disclosures.

No reference to 'interim reporting'

To avoid unnecessary confusion, the draft ASRS standards omit all references to interim reporting requirements included in IFRS S1.

Remuneration disclosure

It's proposed that entities would be required to disclose both: a) a description of whether and how climate-related considerations are factored into executive remuneration; and b) the percentage of executive management remuneration recognised in the current period that is linked to climate-related considerations.

For reporting purposes, 'executive' and 'executive management' are proposed to have the same meaning as 'key management personnel' and 'remuneration' is proposed to have the same meaning as 'compensation' as defined in AASB 124 Related Party Disclosures.

Not for profit entities

Charities registered with the Australian Charities and Not-for-Profits Commission (ACNC) (that are not required to disclose under Part 2M of the Corporations Act 2001 (Cth)) do not appear to be captured under the government's proposed approach – though those that are not registered with the ACNC and are required to disclose under Chapter 2M may be in scope.

However, the draft ASRS standards do envision that not-for-profit entities would need to:

> 'disclose material information about…[their] climate-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, access to finance or cost of capital, and its ability to further its objectives, over the short, medium or long term'.

This is proposed to include information about their:

- Governance arrangements
- Certain disclosure requirements on the entity's strategy and risk management such as: a) qualitative information on the current effects of climate-related risks and opportunities on the entity's business model, and strategy and decision making; and b) qualitative information on the entity's overall risk profile and risk management processes to identify, assess, prioritise and monitor climate-related risks and opportunities.

The draft standards propose to make explicit that not-for-profit entities would not need to:

> 'undertake an exhaustive search for information to identify climate-related risks and opportunities that could reasonably be expected to affect the entity's prospects, but would be required to use all reasonable and supportable information available to the entity at the reporting date without undue cost or effort in preparing material climate-related financial information required by [draft] ASRS 1 and [draft] ASRS2'.

Do super funds face particular challenges in complying with the proposed ASRS requirements?

The AASB is also seeking feedback on whether there are circumstances 'specific to superannuation entities that would cause challenges for superannuation entities to comply with the proposed requirements' under draft ASRS 1 and draft ASRS 2.

Next steps

- Consultation is open until 1 March 2024. The AASB plans to run a series of outreach events in early 2024, as well as having an online survey and accepting written submissions on the draft standards.
- Following consultation, the AASB will consider feedback on the proposed draft standards and determine whether the proposals should be implemented (with or without further changes). Depending on the feedback received, the AASB may conduct further consultation on another Exposure Draft or a 'Fatal-Flaw Review Draft'.
- It's envisioned that the draft ASRS standards once finalised, will apply to annual reporting periods beginning on or after 1 July 2024 (for certain entities – Group 1 entities as set out in Treasury's second consultation paper at Table 2, p8) with first disclosures forming part of the Annual Reports from August 2025 onwards.
- However this timing is contingent on the passage of the necessary legislation to establish the mandatory climate disclosure regime (including empowering the AASB to issue the ASRS standards). As yet this legislation has not yet been consulted on or introduced into Parliament.

[Sources: AASB media release 23/10/2023; Exposure draft: Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information]

New report finds US companies have stepped up their cyber risk disclosure ahead of the commencement of new SEC rules

In advance of the commencement of the US Securities and Exchange Commission's (SEC) new cyber risk disclosure requirements, analysis from Institutional Shareholder Services (ISS) of disclosures by Russell 3000 companies suggests that most companies are already stepping up their cyber risk mitigation disclosure.

For context, the SEC adopted new rules on cyber risk management, strategy, governance and incident disclosure for public companies in July 2023. Broadly, the changes will mean that public companies will need to disclose their cybersecurity risk management strategies and governance practices annually, as well as any 'material' cybersecurity incidents and their impact (generally) within four business days of determining the incident to be material. For more see the SEC's fact sheet summarising the changes here: https://www.sec.gov/files/33-11216-fact-sheet.pdf

According to ISS' analysis:

- Almost all companies in the Russell 3000 disclose an overview of the company's general approach to information security risk mitigation
- Over 50% of this group of companies also include detailed disclosures about their information security risks as well as strategies or plans to mitigate them.
- S&P 500 companies are seemingly leading the way – ISS found that more than 80% of this group disclose details of their approach to information security risk mitigation and the methods used for mitigation.

Board expertise

Interestingly, and despite the fact that companies are not obligated (under the SEC changes) to disclose directors' cyber expertise, ISS found that more companies (especially larger companies) are electing to do so. According to ISS:

- more than half of S&P 500 companies have at least three directors with the relevant cyber expertise.
- for Russell 3000 (ex. S&P500) fewer companies (20%) have more than three directors with these skills.

ISS attributes the move to increased transparency around this to investor pressure.

Cyber metrics in incentive plans

ISS also found that a handful of companies - 16 S&P 500 and 22 Russell 3000 (ex. S&P500) - include cybersecurity measures as part of either annual or long-term executive compensation incentive programs.

[Source: ISS media release 19/10/2023]

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[Sources: ASIC media release 18/10/2023; Report 774 Annual financial reporting and audit surveillance report 2022–23]

ESG

UK government seeks stakeholder views on Scope 3 emissions reporting

- In June 2023, the International Sustainability Standards Board (ISSB) issued its inaugural global standards for sustainability-related disclosures (IFRS 1 and IFRS 2).
- Among other things, the standards would require companies to disclose their absolute gross Scope 1 and Scope 2 (operational) and Scope 3 (broader value chain) greenhouse gas emissions (though the ISSB has provided temporary relief from the requirement to disclose Scope 3 emissions for the first annual reporting period in which a company applies the IFRS S2 requirements).
- While the standards are not automatically binding on reporting entities they are expected to form the core of emerging (and mandatory) sustainability-related financial disclosure requirements globally. For more on the ISSB standards see: Step change in sustainability reporting: First two ISSB standards released - Why the release of the first two global sustainability standards is such a big deal - MinterEllison
- To help inform the UK government's decision on whether to endorse the ISSB standards, it has issued a call for evidence seeking stakeholder views on the 'costs, benefits and practicalities of Scope 3 GHG emissions reporting'.

Timeline and next steps

- The due date for submissions is 14 December 2023.
- The government has flagged its intention to publish its response within 12 months of this date (by mid-March 2024).
- It's envisaged that further consultation would be undertaken on the content/timing of any new reporting obligations, including which entities would be caught by the new requirements.

[Source: UK Department of Energy Security and Net Zero media release 19/10/2023]

Majority Action has issued a call for ISS to strengthen its stance on Scope 3 emissions

Majority Action has released a letter to Institutional Shareholder Services (ISS) calling for changes to its benchmark Socially Responsible Investment (SRI) policy on climate.

This is considered an important step in pushing companies to act because Majority Action considers

> 'ISS has outsized influence on proxy voting outcomes, which in turn have a material impact on the diversified portfolios of long-term investors across the ecosystem'.

Broadly, the letter calls on ISS to:

- Set the expectation that companies:
  - include Scope 3 emissions in their targets where applicable
  - set net-zero and medium-term absolute emission reduction targets consistent with the goal of halving global emissions by 2030
  - align their capital expenditure and policy influence activities with a 1.5°C pathway.
- Take stronger action to escalate its concerns:
  - Withhold support from the entire board of 'climate critical issuers' that fail to meet these expectations. For context, the letter suggests that this should include companies that are either: a) included in the Climate Action 100+ focus list; or b) 'the recipient of an insufficiently addressed climate strategy resolution receiving more than 30% of shared voted'.
  - Withhold support from the incumbent Chair of the responsible committee and from the Chair of the Board and or Lead Independent Director at financial services companies that fail to meet these expectations.
- Importantly, Majority Action has called on ISS to apply these expectations as a 'blanket policy' – as opposed to on a case-by-case basis.
- Majority Action has also called on the public to demonstrate support for these changes by signing on to the letter.

[Source: Majority Action email to subscribers 20/10/2023]

Transition planning: MAS consults on draft guidance for financial institutions

The Monetary Authority of Singapore (MAS) is consulting on proposed climate transition planning guidelines for financial institutions (banks, insurers and asset managers – together FIs).

The focus of the (draft) guidance is on FIs' internal strategic planning and risk management processes.

The due date for submissions is 18 December 2023.

The table below provides a snapshot of some of the key expectations proposed.

KEY EXPECTATIONS	
Engagement (not divestment)	▪ MAS' expectation is that engagement should be 'the key lever… for FIs to steward their customers and investee companies to transition in an orderly manner'. ▪ MAS Managing Director Ravi Menon explained the rationale behind this as follows: 'Indiscriminate divestment from carbon-intensive activities will not get us to a net-zero world. A large part of the global economy depends on such activities for growth and jobs. Rather, financial institutions must actively support their borrowers, insured parties, and investee companies to progressively decarbonise their activities through credible transition plans. We may have to accept short-term increases in financed, facilitated, or insurance-associated emissions arising from these plans provided these plans support climate positive outcomes consistent with a net-zero pathway. Regulators must support financial institutions in such efforts. This is why MAS is taking the lead in setting clear supervisory expectations on transition planning for our financial institutions.'
Adopt a 'multi-year risk perspective'	▪ MAS writes: 'Given that the time horizons for physical and transition risks to manifest are long and uncertain, FIs need to take a multi-year risk perspective when assessing the sustainability of their business models and portfolios'.
'Holistic treatment of risks'	▪ MAS writes that 'as FIs are exposed to climate-related risks through the effects of both transition and physical risks to their portfolios, they should take an integrated approach to climate mitigation and adaptation measures by working closely with their customers and investee companies'.
Nature/biodiversity risks should be considered	▪ MAS considers that: 'FIs should holistically consider the important inter-dependencies between climate and nature as well as the potential trade-offs such as environmental degradation arising from the pursuit of climate solutions'.
Meaningful disclosure of short, medium and long term risks and mitigation plans	▪ MAS writes that 'FIs are expected to disclose meaningful and relevant information to help stakeholders understand how they are responding in the short-, medium- and long-term to material climate-related risks, and the governance and processes for addressing such risks'.

[Source: MAS media release 18/10/2023]

CDP to align with ISSB climate disclosure standard in 2024

- CDP has announced that this year a record 23,000+ companies - including listed companies worth US$67 trillion (over 66% of global market capitalisation) – are disclosing their environmental data through CDP (up 24% on 2022).

- Looking at the data being disclosed, CDP flags that companies are lagging on nature disclosure – for example, only 1% of companies reported across three key areas: climate change, water security and deforestation.
- Looking ahead, CDP has flagged that its 2024 questionnaire will align with the ISSB's climate disclosure standard (IFRS S2) and 'from next year will start to reflect the TNFD framework [ie Taskforce on Nature-related Financial Disclosure framework], encouraging more companies to report across both climate and nature matters'.
- CDP has also committed to reflecting the SEC's upcoming climate disclosure rule and the European Sustainability Reporting Standards in its disclosure system.

[Source: CDP media release 18/10/2023]

QLD to legislate renewable energy targets for electricity generation

The Energy (Renewable Transformation and Jobs) Bill 2023 (QLD) (the Bill) was introduced to Parliament on 24 October 2023.

Notably, the Bill proposes to legislate the following renewable energy targets for QLD (through to 2035):

- 50% of the electricity generated in Queensland to be generated from renewable energy sources by 2030
- 70% of the electricity generated in Queensland to be generated from renewable energy sources by 2032
- 80% of the electricity generated in Queensland to be generated from renewable energy sources by 2035

In addition, (if enacted) the Bill would:

- Require the Minister to table an annual progress statement
- Commit the Minister to reviewing the targets every five years, and to conducting a further review in 2030 to determine (among other things) whether new targets for electricity generated in QLD from renewable energy sources should be set beyond 2035.

[Source: Energy (Renewable Transformation and Jobs) Bill 2023 (QLD)]

Expanded water trigger: New Greens Bill seeks to close gas development loophole

The Greens introduced a new Bill - Environment Protection and Biodiversity Conservation Amendment (Expanding the Water Trigger) Bill 2023 [No. 2] (Cth) – into the Senate on 18 October 2023.

Broadly, the purpose of the Bill is to amend the existing Environment Protection and Biodiversity Conservation Act 1999 (Cth) to close a loophole that means that some forms of gas development (eg shale gas development) that have a significant impact on water resources do not require Ministerial approval. The explanatory memorandum explains:

> 'At present, an action that involves coal seam gas development or a large coal mine requires approval from the Minister for Environment (the Minister) if the action will have a significant impact on a water resource. However, unconventional gas development such as shale gas development does not require the same approval, despite their impact on surface and groundwater resources.
>
> This Bill will simply expand the water trigger to require the Minister to assess the significant impacts on water resources of all unconventional gas developments'.

In her second reading speech, Greens Senator Hanson-Young called for the urgent passage of the Bill, submitting that the proposed expanded trigger is consistent with the government's previously stated commitments.

> 'This Bill does nothing more than implement commitments already made by the Albanese Government both at the election and in their Nature Positive Plan…With broad support across the Parliament, we must urgently act to pass this Bill and implement an expanded water trigger before commercial fracking gets the green light and irreversible damage is done….With the Government already committed to the reform now laid out in this Bill before the Senate, there is nothing standing in the way of the implementation of an expanded water trigger by the end of this year. The ball is in the Government's court, and we look forward to working cooperatively with them to ensure the urgent passage of this Bill'.

[Source: Environment Protection and Biodiversity Conservation Amendment (Expanding the Water Trigger) Bill 2023 [No. 2]]

131 companies have urged leaders to set timebound targets to phase out unabated fossil fuels ahead of COP 28

- 131 companies representing $987 billion in global annual revenue, have written to the heads of state and governments attending COP28, urging them to set timebound targets to phase out unabated fossil fuels as well as policies to facilitate uptake of clean energy.
- More specifically, the letter calls on governments to:
  - 'Set targets and timelines for the phase-out of unabated fossil fuels in line with 1.5°C, supported by national plans and policies to ensure a just transition for affected workers and communities'.
  - 'Accelerate the clean energy transition by committing to reach 100% decarbonized power systems by 2035 in advanced economies, and by 2040 for other countries, at the latest'.
  - 'Support countries in the Global South in diversifying their energy systems and developing 1.5°C-aligned economic pathways, including through the provision both of finance that does not exacerbate unsustainable sovereign debt, and of capacity-building for just transition planning. This must be part of a broader alignment of public and private financial flows with the objective of an equitable global phase-out of fossil fuels'.
  - 'Ensure clear pricing signals through a meaningful price on carbon that reflects the full costs of climate change — and reform and repurpose fossil fuel subsidies toward energy efficiency, renewable energy and other measures to support a people-centred and equitable clean energy transition'.
- The letter also calls on:
  - 'Financial institutions to work collaboratively with us, and with policymakers, to ensure that capital is being allocated to accelerate the clean energy transition - creating a financial system that safeguards future growth and returns for people and planet'.
  - 'Fossil fuel producers to join us in setting science-based, net-zero targets and to develop and publish transition plans on short- and long-term steps to decarbonize business operations, products and services. This includes shifting investments away from fossil fuels and toward clean energy to halve GHG emissions by 2030 and enable a net-zero global energy system by mid-century'.
- The letter underlines the vital role that cooperation and coordination between government, policymakers and the private sector is expected to play in transitioning away from fossil fuels and the willingness of the signatories to the letter to support these efforts.
- The letter was coordinated by the We Mean Business Coalition through the Fossil to Clean Campaign. You can find the full text, including the list of signatories here.

[Source: We Mean Business media release 23/10/2023]

In Brief | Climate Action 100+ has released the latest round of company assessments against its recently updated Net Zero Company Benchmark. A key takeaway is that 'most focus companies are not moving fast enough to align with the goals of the Paris Agreement and reduce investors' risk' and in particular, are lagging on the actions needed – eg setting short-term GHG reduction targets, capital expenditure (CapEx) allocation, climate policy engagement, just transition and GHG emissions reductions - to demonstrate they have credible transition plans in place to meet their long-term targets

[Sources: Climate Action 100+ media release 18/10/2023; Climate Action 100+ summary findings; Full findings]

In Brief | New research reveals that 85% of ASX 100 companies have disclosed some form of ESG measure in their incentive plans for FY22 with 'social' measures (eg employee health and safety) the most prevalent form of measure used

[Source: Guerdon Associates media release 09/10/2023]

Regulators

CHESS replacement project: ASIC Chair updates Committee

- The primary focus of Australian Securities and Investments Commission (ASIC) Chair Joe Longo's 20 October 2023 opening statement to the Parliamentary Joint Committee was on ASIC's oversight (together with the RBA) of the ASX and in particular its actions in connection with the troubled ASX CHESS replacement project.
- Mr Longo recapped key actions taken by ASIC to date – including issuing notices to ASX to provide three special reports (and corresponding audit reports) and the imposition of licence conditions requiring ASX to appoint an independent expert (approved by ASIC) to assess whether ASX's assurance program for the replacement of CHESS is fit for purpose, identifying any shortfalls, and reporting regularly to ASIC – underlining the regulator's continued commitment to using all available regulatory measures to ensure ASX complies with regulatory expectations and obligations. Mr Longo noted that the external audit of the third of the reports – an 'important benchmark of ASX's current program delivery capabilities' - is due by 31 October. Mr Longo said that ASIC intends to consider all three reports 'holistically' to determine whether any further regulatory action is required.
- Mr Longo also recapped the steps ASIC has taken to ensure appropriate stakeholder engagement including hosting an industry roundtable in early August 2023 to address 'longstanding industry concerns' about the project, and 'the adequacy of ASX's stakeholder engagement and governance, including ASX's management of intragroup conflicts of interest'. Mr Longo noted that following this, at ASIC's request, ASX established a Cash Equities Cash Equities Clearing and Settlement Advisory Group (CS Advisory Group), led by independent Chair Alan Cameron AO. ASIC also issued a letter (with the RBA) to ASX Clear and ASX Settlement, requiring them to resource, consult and engage with the CS Advisory Group in good faith and in the public interest.
- Mr Longo said that ASIC and the RBA intend to continue to 'actively monitor the engagement of these ASX entities with the CS Advisory Group and the ASX CS Board's response to advice provided by the group'.
- Finally, Mr Longo welcomed the passage of the Competition in Clearing and Settlement Reforms which he said,

  > 'will enable ASIC to make rules that deal with the activities, conduct and governance of CS facility licensees, their associated entities and other persons specified by regulations. This may include governance arrangements and handling of conflicts of interest, building on the RBA's Financial Stability Standards'.

- Mr Longo said that ASIC plans to engage in 'extensive consultation' before making any new Rules and is committed to using its new powers on 'a timely basis'.
- For context, the reforms referred to appear to be those included Treasury Laws Amendment (2023 Measures No. 3) Bill 2023 which received Assent on 20 September 2023. The changes in Schedule 3 (among other things) provide ASIC with a rule-making power to facilitate competitive outcomes in the provision of clearing and settlement services.

  [Source: Opening statement by ASIC Chair Joe Longo at the Parliamentary Joint Committee on Corporations and Financial Services, Oversight of ASIC, the Takeovers Panel and the Corporations Legislation 20/10/2023]

Financial Services

Top Story | Ministerial muscle - Australian government to strong arm payment systems regulation

The Australian government is consulting on exposure draft legislation to amend payment systems regulation in Australia. The proposed legislation implements the proposals in the Government's Consultation Paper on Reforms to the Payment Systems (Regulation) Act 1998 issued in June 2023 (Consultation Paper).

A key element of the proposed regime is to give the responsible Minister the power to designate a payment system and to appoint a regulator to make rules applying to a broad range of participants in the payment system.

MinterEllison has released an article discussing the content and the design of the proposed changes.

You can find the full text here: Ministerial muscle - Australian government to strong arm payment systems regulation - POST - MinterEllison

ASIC's priorities in the consumer credit sector

Our key takeaways from Australian Securities and Investments Commission (ASIC) Executive Director for Regulation and Supervision Greg Yanco's 18 October 2023 address to the 33rd Annual Credit Law Conference are below.

ASIC's priorities in the consumer credit sector

Mr Yanco prefaced his remarks by stating that:

> 'Improving consumer outcomes is an enduring objective for ASIC. In particular, over the coming year, this will mean sharpening our focus on protecting financially vulnerable consumers, especially those in hardship. And, ultimately, preventing more consumers from falling into hardship in the first place'.

Mr Yanco identified the following as key priorities.

Lenders' handling of financial hardship applications

Following the public release of a letter from ASIC which was also sent to the CEOs of 30 of the largest lenders in Australia highlighting ASIC's expectations around compliance their financial hardship obligations, Mr Yanco flagged that ASIC:

- Plans to collect information from these lenders relating to financial hardship applications
- Has commenced a review of 10 large home lenders to understand their approach to financial hardship with findings expected to be published in 'early to mid-2024'.

Mr Yanco added that ASIC stands ready to take enforcement action to address non-compliance where this is identified, pointing to the regulator's record of doing so to date in support.

Financially vulnerable credit consumers

Mr Yanco observed that in the current economic environment 'more people may become the target of predatory lending practices, especially those on lower incomes'. Looking ahead, Mr Yanco said that ASIC:

> 'will be closely monitoring compliance with consumer protections for small amount credit contracts and consumer leases. We are also seeking to extend our product intervention orders for some short-term credit facilities and continuing credit contracts'.

More specifically:

- **Small amount credit contracts and consumer leases:** Mr Yanco flagged that ASIC has been engaging with industry to help them understand new laws enshrining stronger consumer protections – the reforms are contained in the Financial Sector Reform Bill 2022 (Cth) - that passed Parliament at the end of 2022. Again, Mr Yanco said that ASIC will act to address non-compliance where this is identified, including court action.
- **Short-term credit facilities and continuing credit contracts:** Currently two product intervention orders - a short term credit product intervention order and a continuing credit contracts product intervention order – are in place targeting certain 'predatory' lending practices. These product intervention orders came into effect on 15 July 2022 and are set to expire on 15 January 2024. ASIC recently consulted on the proposed extension of these orders.

(For more see: Targeting predatory lending | ASIC consults on extending two product intervention orders - POST - MinterEllison). Mr Yanco said that ASIC expects to provide an update on the outcome of its consultation.

Product design and distribution

Mr Yanco said that

- 'ensuring compliance with the design and distribution obligations remains critical to promoting responsible lending' and with DDO now well-established, ASIC stands ready to move swiftly to 'disrupt poor practices and prevent poor consumer outcomes'.
- 'the DDO stop orders are now a go-to regulatory tool for ASIC' with the regulator issuing close to 80 over the course of the last financial year.

This year, Mr Yanco said that ASIC is expanding its DDO focus to include 'credit like' products (and has already issued interim stop orders targeting a credit for rent product and a Buy Now, Pay Later (BNPL) product).

Looking forward, Mr Yanco said that:

- Target Market Determinations (TMDs) remain an area of focus for ASIC and urged businesses to update these documents 'on a regular basis'. Mr Yanco flagged that lenders can 'expect closer scrutiny of their TMDs in the coming year'.
- ASIC also plans to sharpen its surveillance focus on compliance with the 'reasonable steps' obligations (ie the actions taken to ensure products are distributed in line with the TMDs).

Credit card issuers

Referencing the improvement areas identified in ASIC's review of the product governance arrangements of a number of buy now, pay later (BNPL) providers, Mr Yanco said that ASIC plans to publish similar guidance for credit card issuers in 2024.

In addition, Mr Yanco said that ASIC has been collecting data from credit card issuers to assess their DDO compliance and identify improvement areas 'including through a focus on problematic debt'.

Retail banking sector

Mr Yanco said that 'one area where we have seen TMDs fall short is in the retail banking sector' and in particular, in the context of ensuring TMDs for both high and low fee basic accounts operate to help ensure that Indigenous consumers eligible for low-fee accounts are identified and migrated to low fee accounts.

Mr Yanco said that ASIC has communicated the findings of its review into the issue and its expectations to the banks reviewed and continues to engage with banks on the issue. ASIC expects to release a public report later this financial year.

ABA Banking Code of Practice – ASIC expects to consult 'shortly'

- Mr Yanco confirmed that in August the Australian Banking Association (ABA) applied to ASIC for approval of a number of changes to the Banking Code of Practice (Code).
- Mr Yanco said that ASIC has reviewed the proposed updates and plans to publish a consultation paper 'shortly'.
- The consultation will address a number of 'key issues' including: responsible lending, scams, de-banking, and co-borrowers and guarantors.
- Following consultation, ASIC will review the feedback received and provide its decision on whether to approve the updated Code or request further drafts.
- Depending on the volume of responses received to the consultation, ASIC expects to announce its decision on the updated Code in Q1 2024.

Financial Accountability Regime (FAR)

- Noting that the Financial Accountability Regime (FAR), which will extend and replace the existing BEAR, is set to apply to the banking sector from March 2024, Mr Yanco said that ASIC is working closely with the Australian Prudential Regulation Authority (APRA) and engaging with industry to ensure a smooth transition to the new regime.

- In support of this aim, Mr Yanco noted the release by ASIC and APRA (who will jointly administer the FAR) of an information package (for more on this read: FAR update | ASIC and APRA release information package - POST - MinterEllison).
- Mr Yanco said that the regulators intend to release finalised Regulator Rules, Transitional Rules for ADIs and Key Functions Descriptions 'in the near future'.

Scams

- Mr Yanco reiterated that disrupting scams continues to be a 'whole of ASIC priority – across all the sectors we regulate'.
- In doing so, Mr Yanco emphasised the 'critical role' banks in particular have to play in this context, noting that ASIC's recent review (see: REP 761, summarised here: Banks and 'corporate Australia' on notice: ASIC calls on banks (and encourages other organisations) to improve their approach to scams - POST - MinterEllison) of the scam prevention, detection and response activities of the four major banks is 'overall, less mature than we expected' and setting out a number of areas where ASIC considers banks could strengthen their anti-scam practices.
- Mr Yanco said that ASIC has now commenced a similar review of the next tier of banks, as well as superannuation trustees.
- Mr Yanco also noted ASIC's participation in the work of the National Anti-Scam Centre.

Cyber and operational resilience

Mr Yanco said that ASIC plans to conduct surveillances to monitor cyber and operational reliance' across its regulated entities and stands ready to take enforcement action where 'egregious failures to mitigate the risks of cyber attacks' is identified.

In particular, Mr Yanco said that

> 'ASIC expects directors to ensure their organisation's risk management framework adequately addresses cybersecurity risk, and that controls are implemented to protect key assets and enhance cyber resilience. Failure to ensure adequate measures are in place exposes directors to potential enforcement action by ASIC based on the directors not acting with reasonable care and diligence'.

Mr Yanco underlined cyber and operational resilience 'will be a key focus area for ASIC for the foreseeable future'.

[Source: ASIC Director for Regulation and Supervision Greg Yanco's address to the 33rd Annual Credit Law Conference 18/10/2023]

Credit risk provisioning practices for locally incorporated ADIs: APRA updates to industry on its expectations

- The Australian Prudential Regulation Authority (APRA) has written to all locally-incorporated authorised deposit-taking institutions (ADIs) that do not apply prescribed provisioning under Prudential Standard APS 220 Credit Risk Management (APS 220) outlining its key observations on the application of expected credit loss (ECL) provisioning.
- APRA states that it 'continues to observe a range of provisioning practices and sees opportunities to further embed consistently robust practice across the industry'.
- APRA's key observations cover the following three key areas:
  - **Controls around model risk management:** APRA writes that 'many ADIs' continue to 'sizeable judgment-based adjustments to compensate for model and data limitations, to ensure provisions reflect credit risk expectations'. While APRA 'acknowledges that judgement-based adjustments have a role to play, and models alone may not be calibrated to adequately capture and reflect all drivers of credit risk' it's expectation is that where these adjustments are made, they are 'supported by appropriately documented analysis and robust controls and governance' including: a) sound processes for the application of adjustments; b) controls to ensure the efficacy of the output, and c) senior management oversight and accountabilities.
  - **'Capturing economic uncertainty':** APRA considers that 'in the current environment, it is important that ADIs can perform comprehensive sensitivity analysis on a regular and timely basis across credit portfolios (by appropriate industry, geographical and other segmentations)' to support management and boards in understanding the sensitivity of the credit portfolio to key risk drivers/helping to inform appropriate provisioning levels. APRA also suggests that this could form part of an ADI's overall stress testing capability

as part of the ICAAP and risk appetite review processes. The letter underlines APRA's expectation that 'appropriate governance' for sensitivity analysis is in place including 'clear accountabilities, robust controls and oversight'.

  - **'Identifying credit deterioration in vulnerable sectors and borrowers'**: APRA writes that 'many ADIs' continue apply manually intensive, and judgement driven processes to understand and capture the impact of emerging risks on vulnerable borrowers and sectors' and underlines the importance of ADIs investing in 'systematic processes to identify vulnerable sectors and factor sectoral risks into loss estimates'. APRA's expectation is that these processes 'would include the use of collective assessments, the level of segmentation of models and data, and the indicators used to transfer loans in vulnerable sectors into impairment Stage 2 under Accounting Standard AASB 9 Financial Instruments'.

- APRA states that it will continue to monitor credit risk assessment methodologies and provisioning levels and engage with ADIs as part of its supervision program.

[Source: APRA Letter to locally incorporated authorised deposit-taking institutions (ADIs): Credit risk provisioning practices for locally incorporated authorised deposit-taking institutions 19/10/2023]

Bank closures: APRA data reveals there has been a 37% decrease in the number of bank branches since June 2017

- The Australian Prudential Regulation Authority (APRA) has released its latest 'points of presence' statistics for the period June 2017-June 2023 – APRA describes this as 'a detailed listing of the physical banking service channels provided to Australians, including branches, ATMs and EFTPOS facilities'.
- Briefly, APRA found that in the year to 30 June 2023, banks closed 424 branches across Australia (including 122 branches in regional and remote areas).
- To put this in perspective, there has been a 37% decrease in the number of bank branches since June 2017 (and a 35% decrease in regional/remote areas)

Points of presence consultation

- APRA launched a consultation in April 2023 on how the points of presence data collection and publication could be made more helpful for users. APRA states that it is currently assessing the feedback provided and engaging in further stakeholder discussions. APRA plans to launch a second round of consultation in 2024.

Senate Committee inquiry into regional bank closures

- Senate Committee inquiry into bank closures in regional Australia has been granted an extension of time to report until the last sitting day in May 2024. On 18 October 2023, the Committee agreed to reopen submissions until 29 February 2024.
- APRA has said it is monitoring the progress of the inquiry and will continue to support its work.

[Source: APRA media release 18/10/2023]

In Brief | ASIC has made a new instrument - ASIC Corporations and Credit (Amendment) Instrument 2023/589 - which (among other things) modifies the reportable situations regime so that licensees do not have to submit notifications about certain breaches of the misleading and deceptive conduct provisions, and the false and misleading representations provision

[Sources: ASIC media release 19/10/2023; ASIC Corporations and Credit (Amendment) Instrument 2023/589]

Risk Management

A foreseeable business risk: NSW Anti-Slavery Commissioner outlines why modern slavery should be a top priority for ASX-listed company boards

Key Takeouts

- Analysis quoted by the NSW Anti-Slavery Commissioner reveals that ASX-listed firms have a higher level of inherent operational exposure to modern slavery risk than firms listed on other global stock indices.
- The Commissioner also flagged that regulators, investors and other stakeholders in Australia and globally are proving themselves increasingly willing to act to push companies to meet their expectations on the issue
- As such, the Commissioner underlined that modern slavery risk is a material and foreseeable business risk that Australian boards should be according priority.

In a recent address, NSW Anti-slavery Commissioner Dr James Cockayne spoke about modern slavery not only a risk to people, but as a governance risk for business (and an area of increasing stakeholder focus and concern).

A key theme running through the address is that:

> 'boards that do not give modern slavery risks sufficient priority face a foreseeable risk of harm to the company, and risk being exposed to action for failure to act with reasonable care and diligence'.

Our key takeaways are below.

Modern slavery as a governance risk

Commissioner Cockayne said investors, regulators and other stakeholders hold a baseline expectation that businesses respect the right to be free from modern slavery. Pointing to the evidence provided by what he described as 'the growing drumbeat of lawsuits, prosecutions, fines, seizures of goods, and shareholder actions over the last three years' globally (as well as in Australia), he observed that these market actors and regulators have demonstrated their willingness to act on the expectation that businesses effectively manage, mitigate and reduce these foreseeable and material risks.

In the Australian context, Commissioner Cockayne suggested that

> 'evidence suggests to me that there is a growing prospect of modern slavery risks showing up in Australian boardrooms, and on Australian balance sheets. In fact, I would argue that modern slavery is, in Australia, the social risk that is most likely to materialise. If there is one social risk that boards should be worrying about, it's modern slavery risk'.

Modelling firm-level forced labour risk – new tool developed

In collaboration with Bridgewater Associates, Dun & Bradstreet, Google and the McCain Institute at Arizona State University, the Office of the NSW Anti-Slavery Commissioner has developed a new tool (primarily for use by institutional investors) - the Forced Labor Open Risk Estimation Tool, or FLORET - for analysing the inherent forced labour risk in the operations of a firm.

Importantly, FLORET does not assess a specific firms' modern slavery risk management arrangements but rather aims to 'build a baseline understanding of the inherent risk associated with different firms and business models'.

The aim is to make this analysis available on an 'open' basis to encourage and enable integration of forced labour risk data into analytics (especially by institutional investors).

ASX companies have a high level of exposure in their direct operations

Commissioner Cockayne said that

> 'FLORET estimates that firms on the ASX have a higher level of forced labour risk in their **operations** [ie the analysis does not consider the risks inherent in firms' supply chains only their direct operations] than other developed world stock indices, though lower than those in emerging markets such as Korea, China and India. Let me say that again: firms on the ASX are more exposed to modern slavery risks than those on other developed world stock indices'. [emphasis added]

The key driver behind this is the sector composition of ASX companies – in particular, the high numbers of mining, oil/gas extraction, manufacturing, and construction sector companies.

The Commissioner opined that given the increasing reliance on 'vulnerable workers' by other sectors – eg horticulture, agriculture, and meat processing as well as aged care – exposure to forced labour risks may be increasing for a range of businesses.

In light of this, Commissioner Cockayne called on boards relying on these workforces to prioritise the issue.

> 'To my mind, this is a clear, foreseeable risk for the companies relying on these workforces, and something that their boards should be actively addressing. This is not an abstract or theoretical modern slavery risk arising in the factory of some fourth or fifth tier supplier overseas. This is modern slavery on our shores, just one or two steps down the supply-chain, or even in some companies' own operations.'

Shift in mindset required

Commissioner Cockayne said that the existing approach to governing modern slavery risks 'is not sufficient' and requires, in his view, a change in mindset. Specifically, Commissioner Cockayne called on businesses 'stop seeing modern slavery risk as a compliance concern, and treat it as a governance risk' - as climate risk is treated and managed.

Commissioner Cockayne suggested that 'inspiration' around the systems needed to identify, manage and mitigate forced labour risk could be drawn from climate action including (among other things): a focus on more reliable firm level data and a clear taxonomy, 'a rapid move by institutional investors towards active ownership'.

[Source: 'Modern slavery as a governance risk': 2023 Phil Spathis Governance Address – Australian Council of Superannuation Investors 16/10/2023]

New parliamentary inquiry launched into the capability of law enforcement to respond to cybercrime

On 16 October 2023, the Labor Chaired Parliamentary Joint Committee on Law Enforcement initiated an inquiry into the capability of law enforcement to respond to cybercrime.

The Terms of Reference provide that the Committee will consider and report on the following:

- 'Existing law enforcement capabilities in the detection, investigation and prosecution of cybercrime, including both cyber-dependent crimes and cyber-enabled crimes;
- International, federal and jurisdictional coordination law enforcement mechanisms to investigate cybercrimes and share information related to emerging threats;
- Coordination efforts across law enforcement, non-government and private sector organisations to respond to the conduct of cybercrimes and risks of cybercrime
- Emerging cybercrime threats and challenges affecting Australian entities and individuals, including the scale and scope of cybercrimes conducted in Australia or against Australians;
- The opportunities and challenges of the existing legislative framework in supporting law enforcement to investigate and act upon instances of cybercrime;
- Prevention and education approaches and strategies to reduce the prevalence of victimisation through cybercrime; and
- other related matters'.

The closing date for submissions is 15 December 2023.

No public hearings have been scheduled and no final reporting date for the inquiry has been released.

[Source: Parliamentary Joint Committee on Law Enforcement Inquiry: The capability of law enforcement to respond to cybercrime]

Other News

Top Story | Australia's thin capitalisation rules – finally, the amending Bill to a Bill to amend

Thin capitalisation rules operate to limit how much debt an entity can use to fund its operations or investments. Broadly, the aim is to prevent entities from shifting profits out of Australia by using excessive debt and interest deductions.

On 18 October 2023, Treasury released an exposure draft Bill (Amending Bill) with proposed amendments to the Treasury Laws Amendment (Making Multinationals Pay Their Fair Share—Integrity and Transparency) Bill 2023 (Original Bill) which passed the House of Representatives on 9 August 2023 and is before the Senate.

The Amending Bill has been published in response to the Senate Economics Legislation Committee (Senate Committee) Report on the Original Bill, released on 22 September 2023 (Committee Report) and includes amendments to various aspects of the thin capitalisation rules in the Original Bill to ensure the rules are 'appropriately targeted'.

MinterEllison has released an article discussing the proposed changes in the amending Bill. You can access the full text here: Australia's thin capitalisation rules – finally, the amending Bill to a Bill to amend - Technical update - MinterEllison

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Contacts

Mark Standen
Consultant

—

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

Siobhan Doherty
Partner

—

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

Kate Hilder
Consultant

—

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