

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 page.

Governance News

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

7 February 2024

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Shareholder Activism

Nature-related risk/biodiversity loss | Green Century claims credit for Home Depot's new stance on deforestation

- In 2022, a majority (64%) of Home Depot shareholders voted in support of a shareholder deforestation proposal filed by Green Century – [item 9 in the 2022 Notice of Meeting](#) - calling on the company to assess how it could increase the scale, pace and rigour of its efforts to eliminate deforestation and forest degradation from its supply chains.
- Green Century claims this has catalysed action from the company on the issue with Home Depot's latest Sustainability Report including enhanced disclosures around its wood sourcing policy and strengthened standards to protect high-risk regions eg the [Cerrado](#) in Brazil.
- On this last point, by the end of fiscal year 2026, wood products sourced to the US and Canada from high-risk regions across a majority of Home Depot's overall wood sourcing (eg Cerrado, [Gran Chaco](#), and [Atlantic Forest biomes in South America](#)) will be required to have third-party certification or be plantation-grown.
- Green Century has welcomed these new commitments but has called on the company to go further – in particular, Green Century considers there is a need to strengthen the company's Canadian sourcing policies to ensure they protect critical wildlife habitat.

[Source: Green Century media release 05/02/2024]

Labour rights | SOC urges Maximus shareholders to back its shareholder proposal ahead of upcoming meeting

SOC Investment Management, together with Service Employees International Union Pension Plans Master Trust, has filed a shareholder proposal at technology services company Maximus Inc ([Proposal 4 in the Notice](#)) – which is opposed by the board – calling on the board to commission and publicly release a third party assessment of the company's commitment to freedom of association and collective bargaining rights.

Ahead of the company's 12 March 2024 annual shareholder meeting, SOC has again urged Maximus shareholders to back the proposal, submitting that Maximus has both:

- failed to engage with SOC on the issues raised in the proposal
- failed to meaningfully respond to the proposal – SOC submits that Maximus has instead,

'cynically sought to pre-empt the proponents by initiating an "assessment" by a biased law firm that has recently represented the Company in employment-related litigation'.

In failing to take the requested actions, SOC submits that Maximus has not responded to investor concerns and continues to expose the company to unnecessary risk. SOC [writes](#):

'Despite our efforts to engage with MAXIMUS, which would very likely have resulted in our withdrawing this proposal if a bona fide independent assessment were actually underway, the Company has seemed determined to stick with its clearly biased and non-independent assessor. Given the developments with the CCO contract discussed above, we believe that MAXIMUS risks not only further disruptions of its operations as more employees exercise their right to free association, but also the loss of existing clients and future business if it develops a reputation for inviting labour disputes or hostility toward unions. By voting FOR Proposal 4 at MAXIMUS's March 12, 2024 annual general meeting, shareholders will send a clear message of support for a genuine assessment of the Company's practices, and reject management's attempt to substitute a biased white-washing in its place'.

Over the past two years, SOC has filed similar proposals at other companies - Amazon, Apple, Starbucks, Wells Fargo, and CVS Health. Of these, the [2023 Starbucks proposal](#) secured [majority support](#).

[Sources: SOC Investment Group media release 02/02/2024; Maximus Notice of Meeting]

Big tech and AI risk: A new focus in 2024 shareholder proposals

The [Investor Alliance for Human Rights](#) (IAHR) has released a list of shareholder proposals (filed by certain IAHR members) on a range of social and governance issues aimed at Meta, Amazon and Alphabet in 2024. In a shift from 2023, a number of proposals specifically concern AI-related risk.

Here's a brief snapshot of the proposals grouped by topic.

ISSUE	COMPANIES TARGETED	PROPOSAL ASK
Social Proposals		
Human Rights impact assessment into impacts of AI driven advertising	<ul style="list-style-type: none"> ▪ Alphabet ▪ Meta 	<ul style="list-style-type: none"> ▪ SHARE intends to file a proposal at Alphabet calling for the board to: <ul style="list-style-type: none"> 'publish an independent third- party Human Rights Impact Assessment (the "Assessment"), examining the actual and potential human rights impacts of Google's artificial intelligence-driven targeted advertising policies and practices'. ▪ Mercy Investments intends to file a proposal at Meta calling on the board to: <ul style="list-style-type: none"> 'publish an independent third-party Human Rights Impact Assessment (HRIA), examining the actual and potential human rights impacts of Facebook's use of artificial intelligence systems that drives its targeted advertising policies and practices throughout its business operations'
Board oversight of AI	<ul style="list-style-type: none"> ▪ Amazon ▪ Alphabet 	<ul style="list-style-type: none"> ▪ AFL-CIO intends to file a proposal at Amazon calling on the company to establish a new board committee to: <ul style="list-style-type: none"> 'address human rights risks associated with the development and deployment of AI systems'. ▪ Trillium Asset management intends to file a proposal at Alphabet calling on the Alphabet board to: <ul style="list-style-type: none"> 'amend the charter of the Audit and Compliance Committee of the Board to add to the committee's "purpose" section appropriate language which makes it clear that the Committee is responsible for overseeing Alphabet's artificial intelligence activities and ensuring management's comprehensive and complete implementation of its AI Principles'
Report on generative AI misinformation and disinformation risks	<ul style="list-style-type: none"> ▪ Alphabet ▪ Meta 	<ul style="list-style-type: none"> ▪ Arjuna Capital intends to file similar proposals at Alphabet and at Meta (together with Open Mic) calling on the boards of each to issue a public report (annually) <ul style="list-style-type: none"> 'assessing the risks to the Company's operations and finances, and to public welfare, presented by the Company's role in facilitating misinformation and disinformation generated, disseminated, and/or amplified via generative Artificial Intelligence; what steps the Company plans to take to remediate those harms; and how it will measure the effectiveness of such efforts'. ▪ Meta proposal ▪ Alphabet proposal
Report on effectiveness of measures in non-US markets to	<ul style="list-style-type: none"> ▪ Meta 	<ul style="list-style-type: none"> ▪ AkademikerPension intends to file a proposal at Meta calling on the company to:

ISSUE	COMPANIES TARGETED	PROPOSAL ASK
prevent/mitigate human rights risks		'report to shareholders on the effectiveness of measures it is taking to prevent and mitigate human rights risks in its five largest non-US markets (based on number of users) relating to the proliferation of hate speech, disinformation, and incitement to violence enabled by its Instagram and Facebook platforms'.
Child safety impacts	<ul style="list-style-type: none"> ▪ Meta 	<ul style="list-style-type: none"> ▪ Proxy Impact intends to file a proposal at Meta calling on the board to publish an annual report on 'whether it has improved its performance globally regarding child safety impacts and actual harm reduction to children on its platform' against quantitative targets to be set by the company.
Surveillance technology	<ul style="list-style-type: none"> ▪ Amazon 	<ul style="list-style-type: none"> ▪ Two proposals are planned to be filed at Amazon concerning use/misuse and risks associated with the company's surveillance technology. ▪ Customer due diligence – misuse of surveillance tech: Investor Advocates for Social Justice intends to file a proposal expressing concern about Amazon's existing policies around preventing customer misuse of surveillance technologie, the effectiveness of Amazon's oversight, the continued release by the company of surveillance products and the lack of public disclosure by the company of customer due diligence or information around this. ▪ Disclosure of risks associated with Rekognition (facial recognition technology): Harrington Investments intends to file a proposal calling on the board to <ul style="list-style-type: none"> '...commission an independent study of Rekognition and report to shareholders regarding: <ul style="list-style-type: none"> – The extent to which such technology may endanger, threaten or violate privacy and/ or civil rights, and unfairly or disproportionately target or surveil people of colour, immigrants and activists in the United States; – The extent to which such technologies may be marketed and sold to authoritarian or repressive governments, including those identified by the United States Department of State Country Reports on Human Rights Practices; ▪ The potential loss of good will and other financial risks associated with these human rights issues'
Governance Proposals (not AI related)		
Equal share, equal vote	<ul style="list-style-type: none"> ▪ Alphabet: ▪ Meta: 	<ul style="list-style-type: none"> ▪ Northstar Asset Management intends to file proposals at Meta and Alphabet calling on the boards of each to: <ul style="list-style-type: none"> 'initiate and adopt a recapitalisation plan for all outstanding stock to have one vote per share'. ▪ Alphabet proposal ▪ Meta proposal
Independence of Lead Independent Director	<ul style="list-style-type: none"> ▪ Meta 	<ul style="list-style-type: none"> ▪ SHARE intends to file at proposal at Meta calling for specific changes to Meta's Governance Guidelines intended to enable the board to consider any matter deemed necessary by the Lead Independent Director at meetings (rather than only those matters that are also agreed with the CEO). The change requested is as follows:

ISSUE	COMPANIES TARGETED	PROPOSAL ASK
		<ul style="list-style-type: none"> Section V of Meta Platforms, Inc. (“Meta”) Corporate Governance Guidelines (Amended as of April 3, 2022) be amended to add, after the sentence “The Chairperson shall schedule and chair the meetings of the Board, and shall coordinate with the Lead Independent Director to set the agenda for such meetings”, the following sentence: “Both the Chairperson and the Lead Independent Director shall have the ability to include items on the agenda independent of the other.”

[Source: Investor Alliance for Human Rights 2024 Tech Proposals 31/01/2024]

Walgreens shareholders vote down all five shareholder ESG proposals at 25 January meeting

Five shareholder ESG proposals went to a vote that Walgreens Boots Alliance (Walgreens) 2024 annual meeting on 25 January 2024. The board recommended shareholders vote 'against' all five proposals and none secured the necessary support to be carried – four of five secured under 10% support, the remaining independent chair proposal (Proposal 6 in the Notice) secured 31.5% support.

The table below provides a snapshot of each, the key reasons for the boards' 'against' recommendation and an indication of how (some) investors voted.

PROPOSAL	WHY THE BOARD RECOMMENDED AGAINST	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
<p>Plastic pollution (cigarette waste)</p> <p>Proposal 5 in the Notice (filed by The Sisters of St. Francis of Philadelphia with co-filers) called on the board to</p> <p>'report on its efforts to educate its customers who purchase tobacco products about the environmental damage caused by improperly discarded tobacco products, and provide information on methods of proper disposal'.</p>	<p>The justification given by the board for their 'against' recommendation was that:</p> <p>'the Board believes that the requested report is not in our stockholders' best interests. Cigarette waste represents a very small portion of waste generated from the Company's products, and the Company's resources would be better spent on efforts to reduce waste...[such as those already being undertaken by the company] that can have a greater impact on our overall waste reduction and environmental footprint'.</p>	<p>Approximately 6% support</p>	<ul style="list-style-type: none"> Norges Bank Investment Management (NBIM) voted against stating that: 'We will not support a shareholder proposal that does not address a material sustainability risk or salient issue for the sector'. California State Teachers Retirement System (CalSTRS) voted against California Public Employees Retirement System (CalPERS) voted against Legal and General Investment Management (LGIM) voted in support. The rationale given was

PROPOSAL	WHY THE BOARD RECOMMENDED AGAINST	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
			<p>that the company's actions do not go far enough -</p> <p>'A vote in favour is applied. We acknowledge that the company has stopped selling E-Cigarettes and has a dedicated stop smoking website. However, as the proponents sets out, not disposing of cigarette waste appropriately by the public can lead to harmful consequences to the environment. Therefore we would encourage the company to promote responsible disposal of cigarette waste not just internally, but to their customers perhaps via its dedicated stop smoking web page'</p>
<p>Independent board chair/separation of Chair and CEO role</p> <p>Proposal 6 in the Notice (filed by Kenneth Steiner) called on the board to adopt a policy/amend the company's governing documents to require the CEO and Board Chair roles be held by two separate people, and that the Chair be an independent director 'whenever possible'.</p>	<p>The board recommended 'against' essentially because it considers 'the rigid approach to the Company's leadership structure requested by the</p>	<p>Approximately 31.5% support</p>	<ul style="list-style-type: none"> ■ NBIM voted in support stating that: 'The board should exercise objective judgement on corporate affairs and be able to make decisions

PROPOSAL	WHY THE BOARD RECOMMENDED AGAINST	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
	<p>proposal is not necessary and not in the best interest of our stockholders. The Board believes it is best positioned to determine the most effective leadership structure for the Company based on the application of business judgment and consideration of the relevant circumstances currently facing the Company'.</p>		<p>independently of management. The roles of chairperson and CEO should not be held by the same individual. Where a company founder combines both roles, we may support this for a limited period, provided the board has put in place measures to mitigate any conflicts of interest.'</p> <ul style="list-style-type: none"> ▪ CalSTRS voted in support ▪ CalPERS voted in support ▪ LGIM voted in support on the basis that 'LGIM expects companies to establish the role of an independent board chair'
<p>Living wage policy/timeframe for adoption</p> <p>Proposal 7 in the Notice (filed by John Chevedden, backed by ShareAction and the Shareholder Commons) calls on</p> <p>'the board and management exercise their discretion to establish company wage policies that are reasonably designed to provide workers with the minimum earnings necessary to meet a family's basic needs, such policies to include reference to established living wage frameworks and timeframes for adoption and to comply with relevant legal obligations'.</p>	<p>Key reasons for the board's 'against' recommendation include that the board:</p> <ul style="list-style-type: none"> ▪ 'does not believe that establishment of the requested wage policies as set forth in the stockholder proposal is necessary or the optimal use of Company resources'; and ▪ considers that 'complying with such a policy detracts from the holistic approach that we use to offer competitive wages and benefits for our team members'; and ▪ the board is of the view that 'we currently 	<p>Approximately 9.4% support</p>	<ul style="list-style-type: none"> ▪ NBIM voted against stating that: <ul style="list-style-type: none"> 'We will not support a shareholder proposal that appears to be overly prescriptive in regard to the company's strategy and/or operations, or that sets unrealistic timeframes, targets or methods for implementation'. ▪ CalSTRS voted in support ▪ CalPERS voted in support

PROPOSAL	WHY THE BOARD RECOMMENDED AGAINST	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
	<p>take appropriate action to consider the issues raised in the stockholder proposal'.</p>		<ul style="list-style-type: none"> LGIM voted in support on the basis that: 'LGIM believes not paying a living wage to employees can create a material risk to portfolio companies'.
<p>(Conservative proposal) EEO policy risk report</p> <p>Proposal 8 in the Notice (filed by the National Center for Public Policy Research (NCPFR) called on the company to:</p> <p>'issue a public report detailing the potential risks associated with omitting "viewpoint" and "ideology" from its written equal employment opportunity (EEO) policy'.</p> <p>In the supporting statement, the NCPFR submits that:</p> <p>'There is ample evidence that individuals with conservative viewpoints may face discrimination at Walgreens and need formal protections...Although federal law generally protects employees from retribution for religious beliefs, it does not protect them from reprisal for social or political ideologies.¹⁰ Given the hostilities against the Company in recent years, protecting employees who do not subscribe to the boycotters' worldview is more important than ever.</p> <p>Presently, shareholders are unable to evaluate how Walgreens prevents discrimination towards employees based on their ideology or viewpoint, mitigates employee concerns of potential discrimination, and ensures a respectful and supportive work atmosphere that bolsters employee performance.</p> <p>Without an inclusive EEO policy, Walgreens may be sacrificing competitive advantages relative to peers while simultaneously increasing company and</p>	<p>Essentially the board recommended shareholders reject the proposal on the grounds that it considers the requested report is 'not necessary not in our stockholders' best interests'.</p> <p>The board writes:</p> <p>'our policies and practices demonstrate that diverse viewpoints are respected and encouraged and are an essential part of advancing our business. In light of our demonstrated commitment to our core values of diversity, equity and inclusion and zero-tolerance policy with respect to discrimination, intimidation and harassment, we do not believe that issuing a public report detailing the potential risks associated with omitting "viewpoint" and "ideology" from our equal employment opportunity</p>	<p>Approximately 0.7% support</p>	<ul style="list-style-type: none"> NBIM voted against stating that: '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'. CalSTRS voted against CalPERS voted against. LGIM voted against on the basis that the 'company appears to be providing shareholders with sufficient disclosure around its diversity and inclusion efforts and nondiscrimination policies'.

PROPOSAL	WHY THE BOARD RECOMMENDED AGAINST	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
shareholder exposure to reputational and financial risks'.	policy, as contemplated by this proposal, is necessary or in the best interests of the Company or our stockholders'.		
<p>Report on risks of reproductive healthcare legislation</p> <p>Proposal 9 in the Notice (filed by the Presbyterian Church (USA)) called for the company to publicly report 'prior to December 31, 2024...detailing any known and any potential risks and costs to the company caused by enacted or proposed state and federal laws regarding mifepristone and other reproductive health medications, and detailing any strategies beyond litigation and legal compliance that the company may deploy to minimise or mitigate these risks'.</p> <p>The rationale for this request is that: 'Because federal and state laws on this issue may conflict or have contested application, shareholders recommend that such a report include the Company's policy on reconciling federal and state law and/or how political factors or litigation threats may influence determinations on where the Company can legally dispense medications'.</p>	<p>The board recommended shareholders reject the proposal because it is of the view that: 'the requested report is unnecessary and that approval of this proposal would not result in an efficient or productive use of the Company's resources'.</p>	Approximately 8% support	<ul style="list-style-type: none"> ▪ NBIM voted against, giving the identical rationale for voting 'against' proposal 8 above. ▪ CalSTRS voted against ▪ CalPERS voted in support ▪ LGIM voted in support because: 'the proponent is asking for clarity around the company's strategy on the sale of Mifepristone as the company has provided contradictory statements on the issue'

[Source: Notice of Meeting; Results of Meeting]

Fossil fuel financing | NYC Comptroller and NYC pension funds file 'Clean Energy Supply Financing Ratio' proposals at major banks

New York City Comptroller Brad Lander has [announced](#) that fossil fuel financing proposals have been filed at six major banks – JPMorgan Chase, Morgan Stanley, Bank of America, Citigroup, Goldman Sachs and Royal Bank of Canada – calling on each to disclose:

'annually its Clean Energy Supply Financing Ratio ("Ratio"), defined as its total financing through equity and debt underwriting, and project finance in low-carbon energy supply relative to that in fossil-fuel energy supply. The disclosure...[should include the banks'] methodology, including what it classifies as "low carbon" or "fossil fuel."

The aim is to push the banks to rapidly scale up their financing of low carbon projects while simultaneously winding back their financing of fossil fuel projects - a necessary shift (it's submitted), if the goal of achieving net zero emissions by 2050 (and limiting global temperature rise to 1.5C) is to be kept in sight.

It's further submitted that:

'Clean-energy-to-fossil-fuel financing ratios have emerged as a key metric for assessing progress in financing the clean energy transition'.

[Note: For context, the 'Clean Energy Supply Financing Ratio' (ESFR) is a metric that compares the financing provided by banks for low-carbon energy supply versus fossil-fuel energy supply. It reflects the balance of investment in clean energy projects and companies relative to traditional fossil fuel ventures. The [Financing the Transition: Energy Supply Investment and Bank Financing Activity report](#) suggests that to align with the goal of limiting global temperature rise to 1.5C, the current ratio needs to increase from 1:1 to 4:1 by 2030, meaning that for every dollar invested in fossil fuels, four times as much should be allocated to low carbon energy projects.]

Sierra Club has [welcomed](#) this development. In a statement Ben Cushing, campaign director of the Sierra Club's Fossil-Free Finance campaign expressed support stating:

'Major banks are not making adequate progress toward their climate goals. Years after making their net-zero commitments, banks are still providing too much financing to fossil fuel companies that are failing to transition, and too little financing to clean energy technologies and other climate solutions. Lagging progress by banks undermines climate action and puts investors' savings at risk. We applaud Comptroller Lander and New York City's pension funds for their continued engagement to push big banks to strengthen their climate commitments and demonstrate progress. We encourage other shareholders, including pension funds across the country, to follow NYC's lead by voting to support these resolutions at the banks' upcoming annual meetings.'

[Source: NYC Comptroller Brad Lander media release 31/01/2024]



In Brief | [Follow This has withdrawn its climate resolution from Exxon, following a court challenge by the company. Follow This states that the 'main reason' behind its decision 'is that Exxon prefers to fight a battle in court rather than allowing shareholders the freedom to vote at the annual meeting'](#)

[Sources: Follow This subscriber email 07/02/2024; Reuters 05/02/2024]

In Brief | [Push for board change at Starbucks continues: SOC has reiterated its previous calls for Starbucks shareholders to back its three board nominees ahead of the upcoming meeting, submitting that 'the current board has tolerated an unacceptable level of reputational risk, a counterproductive approach to labour issues and a flawed allocation of resources' impacting shareholder value](#)

[Note: For context, SOC's campaign for board change at Starbucks (read: [Governance News 06/12/2023 at p14](#)) follows a [52% vote in support](#) of a 'freedom to unionise proposal' at the Starbucks 2023 shareholder meeting. 2023 was also a year in which shareholder proposals dealing with various issues around worker rights/welfare including the right to unionise emerged as an area of increasing focus for shareholder advocacy groups and an issue that investors showed themselves increasingly willing to support. Analysis from Diligent Market Intelligence found that 'freedom of association proposals' were among the best performing ESG proposals of the 2023 season. Read: <https://corpgov.law.harvard.edu/2023/11/30/which-esg-proposals-won-the-favor-of-investors/>]

[Source: SOC Letter to Starbucks shareholders 25/01/2024]

Disclosure and Reporting

Greenwashing | ASIC Deputy Chair highlights tackling greenwashing as a top priority in the super context

In her 1 February 2024 [keynote address](#) to the Connexus Super Chair Forum, Australian Securities and Investment Commission (ASIC) Deputy Chair Sarah Court spoke about ASIC's enforcement priorities over the next 12 months, including ASIC's continuing focus on tackling greenwashing.

On this point, Ms Court observed that:

- **ASIC's current enforcement focus is on enforcing 'existing laws** which should be familiar to everyone'. Though all ASIC's greenwashing actions to date fall within the 'general descriptor' of 'misleading or deceptive conduct', in future this may broaden to include 'licence obligations, directors' and officers' duties and a range of other obligations'.

- **ASIC intends to continue to use 'every lever legislation affords us to eliminate' greenwashing** including (potentially) taking court action – ASIC's willingness to do is evidenced by its track record to date.

- **Particular focus areas:** Ms Court said that:

'Going forward our focus will be on **net zero statements and targets made without merit**; the use of terms like "carbon neutral", "clean" or "green" that are not founded on reasonable grounds; and the use of **inaccurate labelling or value terms in sustainability-related funds**'. [emphasis added]

- **Expectation of direct board oversight:** Ms Court said that:

'We expect boards to engage directly on sustainability claims – whether they are aspirational statements, targets, active stewardship commitments or investment descriptions'.

[Source: Australian Securities and Investment Commission (ASIC) Deputy Chair Sarah Court's Keynote address to the Connexus Super Chair Forum, 01/02/2024]



Investor coalition pushes Bank of England's Prudential Regulation Authority to introduce tougher climate disclosure requirements

21 institutional investors (led by Sarasin & Partners), have written ([full text letter](#)) to the Bank of England's Prudential Regulation Authority (PRA) calling on it to implement new climate disclosure requirements for banks.

Briefly, investors are calling for:

'**disclosures** on how material climate risks have been factored into banks' financial statements, auditor reports and capital adequacy reporting. Investors furthermore wish to ensure these disclosures cover severe but plausible climate scenarios that consider the latest science on tipping points and other non-linearities, something that has often been missing'.

The investors consider this necessary to ensure they have access to the information necessary to understand how effectively banks are managing climate risk.

The investors have also called more 'proactive enforcement' of existing accounting/audit rules to:

'ensure that material climate risks are properly reflected in banks' financial statements (particularly with relation to banks' Expected Credit Loss assumptions) and auditor reports'.

Finally, investors also express their strong support for 'further work around how regulatory capital requirements could better reflect climate risks to build system resilience' as foreshadowed in the [Bank of England's March 2023 report](#).

[Source: Sarasin and Partners media release 01/02/2024]

Worker welfare | Workforce Disclosure Initiative transfers to Thomson Reuters Foundation

What is the Workforce Disclosure Initiative? In 2016 ShareAction established the Workforce Disclosure Initiative (WDI) in a bid to catalyse meaningful corporate disclosure around how businesses treat their workers. ShareAction sums up the aim of the initiative as

'provid[ing] shareholders...with the information they need to inform investment decisions or push for improvements'.

To date, ShareAction writes that the 230 of the world's largest companies employing 13 million direct employees have responded to the WDI annual survey – providing significantly increased transparency on the issue and offering broader insights into global trends.

WDI has also been active in pushing for global regulators to consider/implement due diligence requirements and sustainability reporting standards on human rights and managing workers.

Thomson Reuters Foundation is the new host (but this does not signal a lessening in focus on the issue):

ShareAction has announced that independent not-for-profit Thomson Reuters Foundation (TRF) has taken over as host of the initiative.

ShareAction makes clear that it has no plans to step back from pushing large employers in the UK to pay the 'Real Living Wage', or from tackling workplace racial discrimination by pushing firms to publish their ethnicity pay gap/advocating for mandatory reporting for large UK companies

[Source: ShareAction media release 01/02/2023]

In Brief | PRI has called on signatories to sign a statement urging relevant authorities across jurisdictions to adopt the ISSB standards on an economy-wide basis by 2025

[Source: PRI media release 05/09/2023; PRI Call to Action: ISSB Adoption]

In Brief | The Global Reporting Initiative (GRI) has released its fourth sector-specific standard – GRI 13 Mining Sector 2024 – which aims to supporting mining organisations to report holistically on their sustainability impacts.

[Source: GRI media release 05/02/2024]

In Brief | CDP's annual non-disclosure campaign involves CDP signatories engaging with companies that have failed to respond to requests to disclose through CDP's climate change, forests and/or water security questionnaires. This year, CDP reports that the campaign has resulted in 317 companies disclosing following 'engagement' with Financial Institutions

[Sources: CDP media release January 2023 [accessed 06/02/2024]]

ESG

Circular economy | European Council and Parliament reach provisional agreement on 'right to repair' directive

The Council and the European Parliament have [reached provisional agreement](#) on a directive – the right to repair or R2R directive - which is intended to incentivise consumers to prolong the life of products by making it easier, simpler and cheaper for them to seek repair of in-scope goods - ie that are technically repairable under EU law - washing machines, dishwashers, refrigerators, or vacuum cleaners - rather than disposing of them and buying replacements.

Among other things, the R2R directive would:

- introduce a right for consumers to request that manufacturers repair in-scope products
- introduce a European repair information form to make it easier for consumers to find information about repairs
- introduce an European online repair platform to make it easier for consumers to find/connect with repairers
- extend the seller's liability period after the repair is completed by 12 months.

Next steps

The provisional agreement reached with the European Parliament now needs to be endorsed and formally adopted by both institutions.

[Source: EU Council media release 02/02/2024]

Nature-related risk: Swiss financial regulator consults on new circular for banks/insurers

- Swiss Financial Market Supervisory Authority FINMA has [released](#) a [draft] circular for consultation setting out its expectations around how banks and insurers take into account nature-related financial risks in corporate governance and institution-wide risk management and its supervisory approach in this context.
- Notably, the circular:
 - 'specifies criteria for assessing the materiality of risks and how scenario analyses are to be incorporated. It also sets out how the main nature-related financial risks are to be embedded as risk drivers in the existing management of credit, market, liquidity and operational risks as well as in insurance activities'.
- The circular is based on recommendations of the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), and the Network for Greening the Financial System (NGFS).

Timing:

- Consultation will close on 31 March 2024.
- The circular is proposed to apply from 1 January 2025 with transitional provisions.

[Source: FINMA media release 01/02/2024]

Another step closer to the introduction of a New Vehicle Efficiency Standard in Australia: Further consultation

The Australian government has taken another step towards the planned introduction of a New Vehicle Efficiency Standard (or fuel efficiency standard).

[Note: For an explanation of how fuel efficiency standards work see: [What will a new vehicle efficiency standard mean for EV adoption? - Electric Vehicle Council](#)]

Following earlier consultation, the government has released an [Impact Analysis](#) seeing views on its proposed approach. In brief, the government's preferred approach is to:

'put in place arrangements **by 2025** that mean we catch up to the US average vehicle emissions intensity by around 2028... This will deliver abatement of 369 million tonnes of CO2 by 2050, and close to 100 million tonnes of CO2 abatement by 2035'.

For clarity, it's proposed that the new standard (once finalised) would only apply to new passenger and light commercial vehicles – used or existing vehicles would not fall without scope.

You can find more detail on the government's preferred approach in [Chapter 7 of the Impact Analysis](#).

Announcing this, the government underlined the potential cost savings for Australian consumers – according to the government's statement, consumers could save \$1000 by 2028 under the proposed model.

Next steps

The due date for submissions is 4 March 2024.

The [government has flagged](#) plans to introduce the necessary legislation '[as soon as possible](#)' following this – the [Impact Analysis](#) suggests this will be 'in 2024'.

It's envisaged that the standard would apply from **1 January 2025**.

[Source: Joint media release Minister for Climate Change and Energy Chris Bowen and Minister for Infrastructure, Transport, Regional Development and Local Government Catherine King 04/02/2024]

In Brief | Net zero by 2050 pathway: The European Commission has recommended the adoption of a new interim target to cut GHG emissions by 90% reduction by 2040 (compared to 1990 levels)

[Source: European Commission media release 06/02/2024]

In Brief | ESG ratings providers: The European Council and Parliament have reached provisional agreement on a proposal for a regulation to strengthen the reliability and comparability of ESG ratings activities

[Source: European Council media release 05/02/2024]

In Brief | Testing directors' liability for ongoing fossil fuel investments: With the backing of a majority of shareholders, the current management of Polish coal company Enea is suing the company's former directors over their (alleged) lack of due diligence in deciding to proceed with a coal plant investment (despite known risks) which resulted in significant loss of value

[Source: ClientEarth media release February 2024 [accessed 02/06/2024]]

In Brief | The Lowitja Institute has called on the Federal government to support the establishment of an Aboriginal and Torres Strait Islander Coalition to 'ensure Aboriginal and Torres Strait Islander leadership is central in climate policy decision-making'

[Source: Lowitja Institute media release 29/01/2024]



Financial Services

FAR implementation | ASIC and APRA update banks on their expectations of compliance in the initial months

- The [Financial Accountability Regime Bill 2023](#) (Cth) and the [Financial Accountability Regime \(Consequential Amendments\) Bill 2023](#) (Cth) received Assent on 14 September 2023.
- The legislation establishes the Financial Accountability Regime which will replace and expand the existing BEAR. For more on the FAR see: [FAR status update: FAR Bills now law - POST - MinterEllison](#)
- The FAR will apply to the banking sector from 15 March 2024 and the insurance and superannuation sectors from 15 March 2025.
- Ahead of this, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA) which have joint responsibility for administering the FAR, have [issued a letter](#) to all authorised deposit taking institutions and their authorised non-operating holding companies clarifying their expectations around implementation of the regime.
- Notably, the regulators write:

'Given that the Minister Rules are in the process of being finalised [see: [see: [Financial Accountability Regime Minister Rules 2022 | Treasury.gov.au](#)] APRA and ASIC recognise that industry may require additional time, beyond the commencement date, to finalise compliance with the new FAR requirements in relation to:

 - submitting applications for registration of new accountable persons; and
 - complying with core or enhanced notification obligations.

Notwithstanding this, given the guidance currently available, we expect entities to submit their registration applications and to make relevant notifications to us as promptly as possible, and **by no later than 30 June 2024**'. [emphasis added]
- For clarity, the FAR commencement date is technically unchanged – see: [s9 Financial Accountability Regime Act 2023 \(Cth\)](#). The regulators have indicated however that they will not take a hard line on enforcement in the initial months.
- The letter confirms that following the release of the Minister's Rules the regulators expect to release the Regulator Rules and Transition Rules as well as reporting form instructions and further details around APRA Connect FAR form availability and FAR entity profile submissions.

Related posts

- [FAR update | ASIC and APRA release information package - POST - MinterEllison](#)
- [FAR status update: Regulators consult on FAR implementation - POST - MinterEllison](#)

[Source: APRA letter 05/02/2024]

UCT reforms | ASIC grants a limited 'no action' position on enforcing UCT reforms for institutional markets

Following commencement of the Unfair Contract Terms (UCT) reforms on 9 November 2023 (read: [Beefed up unfair contract terms regime to commence next year - Insight - MinterEllison](#) and [What do changes to unfair contract terms mean for financial service providers - Insight - MinterEllison](#)), the Australian Securities and Investments Commission (ASIC) has granted a limited class no-action position for institutional markets.

Briefly, ASIC states that it

'[does not](#) intend to take action for a contravention of the relevant UCT provisions or related obligations in relation to the class of counterparties and standard form contracts outlined in the no-action letter [eg institutional investors]'.
'

ASIC's [letter](#) outlines the scope of the relief.

The relief has been granted in response to an application from Australian Financial Markets Association (AFMA) [which raised concerns that relief was needed if the UCT reforms were to operate as intended – ie not apply to](#)

'certain sophisticated participants in financial markets who are not consumers or small businesses intended to be covered by the UCT regime'.

In granting the relief, ASIC made clear that ASIC's no-action position does not preclude third parties (including the Director of Public Prosecutions) from taking legal action in relation to the conduct covered.

[Source: ASIC media release 06/02/2024]

DDO enforcement | ASIC accepts enforceable undertaking from BNPL provider

- The Australian Securities and Investments Commission (ASIC) has [announced](#) it has accepted an enforceable undertaking (EU) from a Buy Now, Pay Later (BNPL) provider to address concerns that the provider 'did not have the appropriate compliance systems and controls in place to comply with the DDO [Design and Distribution Obligations]' over a 15 month period.
- These concerns stem from the fact that the provider did not have in place Target Market Determinations (TMDs) for seven credit products – which are financial products under the DDO regime – which it distributed to 1658 consumers over the period 5 October 2021 to 15 March 2023.
- Under the EU the provider has agreed to engage an independent expert to report on:
 - 'whether...[the provider's] clients who were issued with one of its products after 5 October 2021 fell within the target market of clients identified in the TMDs,
 - the fees and charges that have been paid to...[the provider] by clients who fall outside of the target market specified in the TMDs,
 - whether...[the provider's] TMDs comply with the requirements of the DDO and if not, what steps...[it] needs to take to rectify this'.
- Further, if the independent expert determines that clients were sold products that were not appropriate to their needs because the consumer fell outside the TMD, the provider is required to notify the clients, cease charging fees/charges and to refund any fees/charges already paid.

[Source: ASIC media release 02/02/2024]

ASIC tells flood inquiry insurers are 'on notice' to act to address known 'weaknesses' in their processes, practices and resourcing

The House of Representatives Standing Committee on Economics has commenced inquiry into insurers' responses to 2022 major floods claims. The inquiry's Terms of Reference cover the floods in south-east Queensland and northern NSW in February and March; in greater Sydney and the Hunter Valley in July; in Victoria, NSW and Tasmania in October; and in the central west of NSW in November and December (see: [Terms of Reference](#)).

Public hearings have been held over the past week.

A key message in Australian Securities and Investment Commission (ASIC) Commissioner Alan Kirkland's 2 February 2024 [opening address](#) to the Inquiry into insurers' responses to 2022 major floods claims, is that not all of the factors contributing to the challenges facing the home insurance market in Australia are external/outside of insurers' control.

Rather, ASIC considers that 'weaknesses' identified in insurers' own internal processes, procedures and policies through ASIC's own work - [Report 765, When the price is not right: Making good on insurance pricing promises \(summarised\)](#) and [Report 768 Navigating the storm: ASIC's review of home insurance claims \(summarised\)](#) - and also identified in the independent report commissioned by the Insurance Council of Australia into insurers' response to the 2022 floods, have meant that insurers were 'poorly prepared' to respond to extreme weather events of 2022.

Mr Kirkland commented:

'There are signs of deeper, longer standing issues with the industry's processes, practices and resourcing that meant it was poorly prepared for those events. In a context where severe weather events are expected to be more frequent and more severe, the overall quality of the industry's response to the 2022 floods was disappointing'.

The Committee also heard that ASIC has 'put the industry on notice' that it expects action on the 'weaknesses' identified'. Mr Kirkland added that:

'given the time that has elapsed since the 2022 floods and storms and the release of our report, we expect to see a significantly better response by the industry to the events that have occurred and continue to occur through this summer, especially on the eastern seaboard'.

Mr Kirkland said that ASIC plans to monitor industry's response and

'if we see serious failures by insurers to comply with their legislative requirements, we will consider enforcement action'.

[Source: ASIC Commissioner Alan Kirkland, Opening statement to the Inquiry into insurers' responses to 2022 major floods claims 02/02/2024]

House inquiry into insurers' response to 2022 major flood claims | Key takeaways from ICA CEO Andrew Hall's opening address

ICA CEO acknowledged issues, underlined the steps already being taken by industry in response and the role of government/community in closing the 'protection gap'

Here are our key takeaways from Insurance Council of Australia (ICA) CEO Andrew Hall's [opening address](#) to the House of Representatives Standing Committee on Economics inquiry into insurers' responses to 2022 major floods claims.

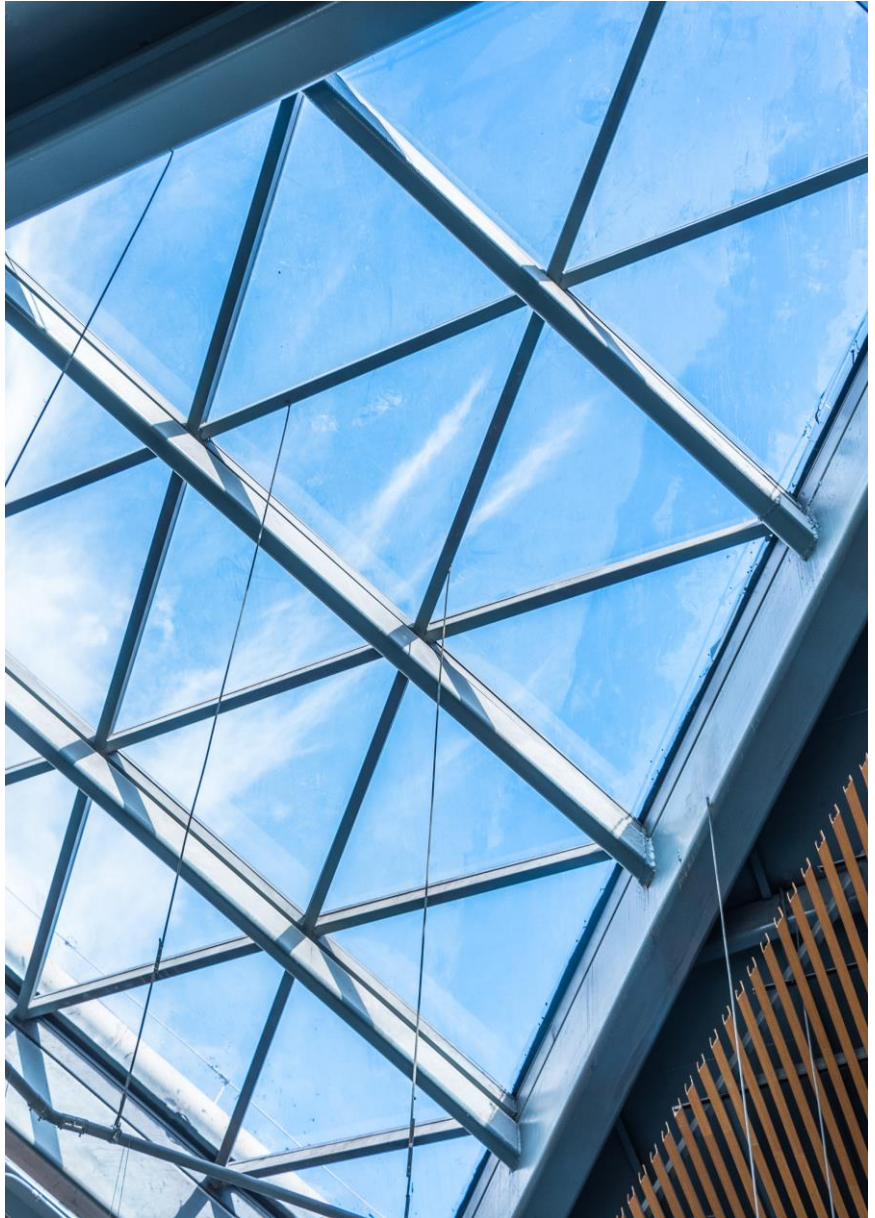
- **Industry is taking steps to improve:** Industry is Mr Hall opened with an apology - 'on behalf of the insurance industry to those customers whose claims were not handled to the standard our industry strives to achieve during the floods of 2022' – before outlining the steps industry already has in train, to identify and address certain issues known to have contributed to substandard consumer outcomes. These measures include:
 - The commissioning of an independent review into insurers' response, conducted by Deloitte published in October 2023 – The New Benchmark for Catastrophe Preparedness in Australia – which Mr Hall said 'exposed in insurers' claims and complaint handling responses, timely communications, better identifying of vulnerability, resourcing internally and externally, processes and technology, and governance'.
 - Mr Hall said that industry has adopted all seven report recommendations to improve their response to future events, adding that work to implement the recommendation is 'well underway'. Mr Hall said that the ICA is committed to commissioning a further independent review of implementation progress in H2 2024.
- **External factors at play:** Mr Hall also observed that a number of external factors contributed to the challenges insurers faced in responding to the flood events eg tight labour market for skilled workers, 'unprecedented building materials constraints', a lack of rental or new and used cars and a 'critical shortage of short-term accommodation. On the issue of filling vacancies, Mr Hall noted that insurers' workforce increased by 2200 in 2022.
- **Closing the 'protection gap' cannot be achieved by industry alone:** Mr Hall underlined the important role that home insurance plays more broadly in the community and touched briefly on the 'growing protection gap' – which he defined as the gap between 'the cost of recovering from an unexpected event and the insurance that's in place to cover that event – and the contributing factors to this. In doing so, Mr Hall underlined that closing this gap cannot be achieved by industry alone.

'This is a complex issue that can only be addressed by the combined efforts of all three levels of government and the insurance industry, working together to reduce risk and so moderate upward pressures on premiums'.
- **Call to abolish taxes on insurance:** Mr Hall submitted that 'the most immediate option to improve insurance affordability would be the abolition of \$6 billion dollars of annual state taxes on insurance, which are the second largest components of home premiums after pricing of flood risk'. In doing so, Mr Hall welcomed moves by the NSW and Tasmanian governments to abolish additional fire and emergency services levies on insurance at state level.
- **Further 'policy solutions' needed:** In addition, Mr Hall called for 'policy solutions to reduce risk' – in addition to measures already in place - such as: 'improved land use planning, better building standards, and investment in community mitigation infrastructure and household-level risk mitigation'.

'Moving from this agreement to specific policies and clear direction is now a matter of urgency and requires significant effort. We were pleased with the establishment of the Hazards Insurance Partnership with the Federal Government, but further partnerships between insurers and government will be vital to solving these problems'.

- **Additional regulation:** Mr Hall appeared to intimate that additional regulation of the sector is unnecessary – pointing to the additional insurance regulation implemented post-Hayne, supplemented by the Insurance Code of Practice. Mr Hall noted that the Insurance Code of Practice is currently undergoing review, led by former APRA regulator Helen Rowell. Ms Rowell's findings will take into account the findings of both the Deloitte review and the parliamentary inquiry.

[Source: ICA media release 05/02/2024]



In Brief | The Assistant Treasurer has confirmed that as yet, no decisions have been made on potential reforms to the Managed Investment Scheme (MIS) framework. Mr Jones underlined that Treasury's review – which commenced in March 2023 - is ongoing. The Treasury website indicates that Treasury expects to provide its findings to government 'by early 2024'

[Sources: Treasury Review of Managed Investment Scheme Framework 2023 – ongoing; Assistant Treasurer LinkedIn post]

In Brief | Financial Advice: ASIC has issued a 'final reminder' to the 4.9% of individual 'relevant providers' who are not yet registered with ASIC (by their AFS licensee) to do so as a matter of urgency. ASIC cautions that if they remain unregistered they will need to cease providing personal advice from 15 February 2024 (until they are registered and recorded as such in the Financial Adviser Register). ASIC also confirmed that it 'will commence a program to ensure compliance with this new obligation shortly'

[Source: ASIC media release 06/02/2024]

Accounting and Audit

CA ANZ release roadmap setting out 14 actions to build trust in the accounting profession

Chartered Accountants Australia New Zealand (CA ANZ) has released a [roadmap](#) outlining 14 actions to strengthen accountability in the accounting profession and bolster public trust. These include:

Introducing additional requirements for members

- Annual ethics affirmation: CA ANZ members will need to 'annually and formally reaffirm their intention to comply with the Chartered Accountant's Commitment' (which essentially affirms they will act in accordance with the Code of Ethics, including acting in the public interest and with integrity')
- Additional Ethics Continuing Professional Development requirements: CA ANZ will triple the mandatory ethics CPD to require members to complete at least six verifiable hours each three year cycle (triennium).

Strengthening the professional conduct framework

- CA ANZ will develop/implement an action plan to adopt the recommendations of the recent [independent review of the CA ANZ's Professional Conduct Framework](#) (the Review). These include for example: expanding the powers of disciplinary bodies to consider 'Firm Events', a fivefold increase in maximum fines for events involving 'Firm Events' and enabling former Australian members to be investigated.
- CA ANZ to publish an annual professional standards report for Australia, 'with information regarding reviews, conduct, discipline and other relevant information'. The [first of these reports](#) was published on 15 December 2023.
- Consider 'further potential approaches' to improving independent oversight of professional conduct.

'Opportunities to strengthen regulation'

The roadmap also identifies a number of 'opportunities' for government to strengthen recommendation including:

- Acting on the [ten recommendations](#) from the Parliamentary Joint Committee on Corporations and Financial Services
- Clarifying ASIC's jurisdiction when it comes to regulating audit firms – the roadmap calls on the government to review and amend relevant legislation (including the Corporations Act 2001 (Cth)) 'clarify the enforceability of audit, audit quality and audit independence standards by ASIC at a firm-wide level'.
- Strengthening whistleblower protections by amending 'relevant Corporations Act provisions so that audit team members – as eligible whistleblower report recipients – are treated as an entity and can share information within the team'

Reporting by multidisciplinary firms

The roadmap also calls on the government to:

'examine through detailed policy review and consultation, ideally as part of the ongoing review by Treasury, current regulatory settings and governance arrangements for the professional services sector. This should include consideration of the scope of reporting by all large professional services firms based on the needs of stakeholders'.

[Source: CA ANZ media release 07/06/2024]

Risk Management

Top Story | Australia's evolving cyber security landscape: Consultation Launched

The Federal Government has released a [Consultation Paper](#) seeking feedback on proposed cyber security laws in support of its 2023-30 Cyber Strategy.

You can find our overview of the proposed reforms on our website here: [Australia's evolving cyber security landscape: Consultation launched - Insight - MinterEllison](#)

AI is not the 'Wild West': Current regulation around AI may not be sufficient says ASIC Chair (but that doesn't mean that AI is unregulated)

We're not there yet: Current regulation around AI may not be sufficient | ASIC

Two key messages in Australian Securities and Investments Commission (ASIC) Chair Joe Longo's 31 January 2024 [keynote address to the UTS Human Technology Institute Shaping our Future Symposium](#) are:

- Existing legal obligations around good governance and the provision of financial services extends to the use of AI – AI is 'not some kind of "Wild West", without law or regulation of any kind'.
- (Notwithstanding this) additional regulation may be necessary in future.

We unpack Mr Longo's comments on each of these points below.

AI is not the 'Wild West'

Mr Longo underlined that under existing Australian law

'businesses and individuals who develop and use AI are already subject to various Australian laws. These include laws such as those relating to privacy, online safety, corporations, intellectual property and anti-discrimination, which apply to all sectors of the economy.

...responsibility towards good governance is not changed just because the technology is new. Whatever may come, there's plenty of scope right now for making the best use of our existing regulatory toolkit. And businesses, boards, and directors shouldn't allow the international discussion around AI regulation to let them think AI isn't already regulated. Because it is. For this reason, and within our remit, ASIC will continue to act, and act early, to deter bad behaviour whenever appropriate and however caused'.

Mr Longo also made clear that ASIC stands ready to 'test the regulatory parameters'. Mr Longo said:

'We're willing to test the regulatory parameters where they're unclear or where corporations seek to exploit perceived gaps. Among other things, that means probing the oversight, risk management, and governance arrangements entities have in place. We're already conducting a review into the use of AI in the banking, credit, insurance, and advice sectors. This will give us a better understanding of the actual AI use cases being deployed and developed in the Australian market – and how they impact consumers. We're testing what risks to consumers licensees are identifying from the use of AI, and how they're mitigating against these risks'.

Notwithstanding this, Mr Longo observed that 'just because existing regulation can apply to AI, that doesn't mean there's nothing more to do'. Mr Longo gave a number of examples of risks around the use of AI – and the potential harms resulting – that may warrant additional/new regulation.

In doing so, Mr Longo made clear that as yet 'no clear consensus has emerged on how best to regulate it [AI]', and that regulatory change will take time.

Mr Longo concluded by underlining that:

'For now, existing obligations around good governance and the provision of financial services don't change with new technology. That means all participants in the financial system have a duty to balance innovation with the responsible, safe, and ethical use of emerging technologies'.

[Source: ASIC Chair Joe Longo keynote address to the UTS Human Technology Institute Shaping our Future Symposium 31/01/2024]

Industry scam codes consultation paper | Consumer advocates call for government's proposed anti-scam measures to include requirements banks to reimburse scam victims

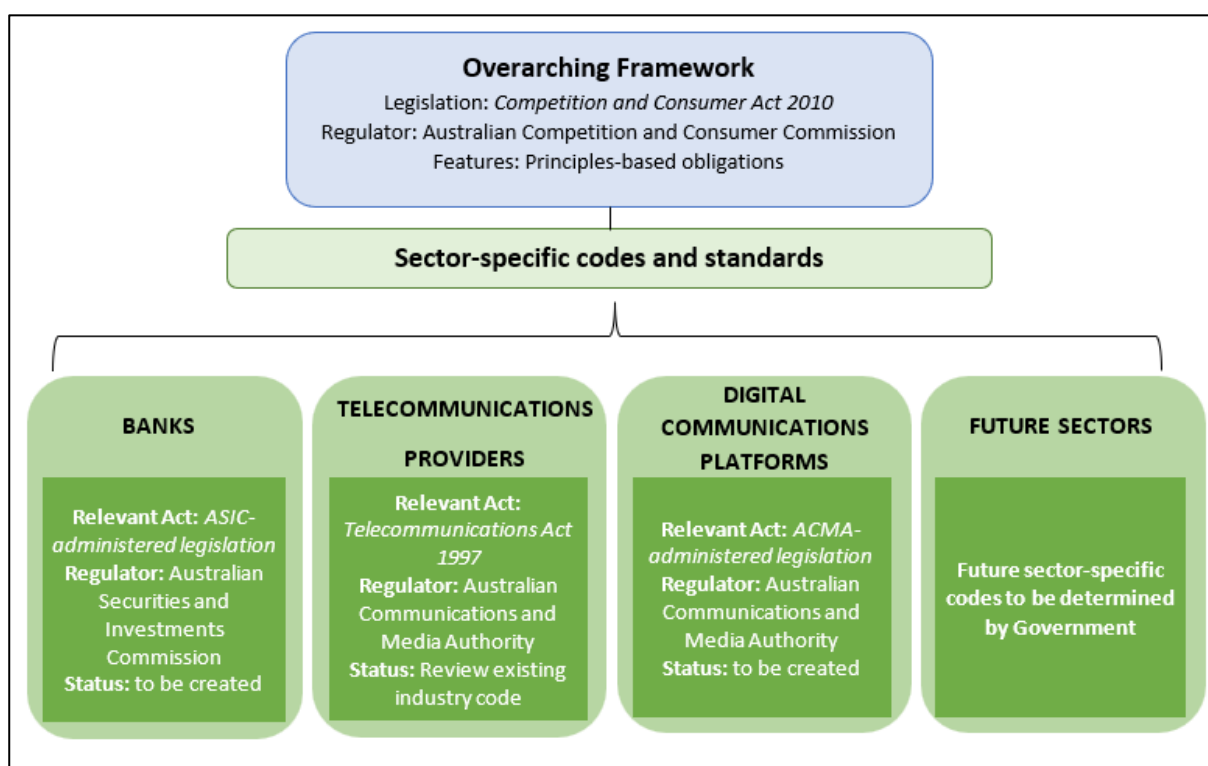
Proposed approach in the consultation paper

The government has released a [consultation paper](#) seeking feedback on its proposed framework for the introduction of planned new industry scam codes. You can find a short overview of the proposed approach in the consultation paper in [Governance News 6 December 2024 at p23](#).

Broadly, its proposed that a new overarching scam prevention regime would be legislated – potentially through the Competition and Consumer Act 2010 (Cth) (CCA) – which would set new mandatory obligations for businesses in designated sectors to take action to address scam activity.

In addition, new industry Codes and standards for designated sectors would also be developed which would include additional, sector-specific obligations on businesses to prevent, detect, disrupt and respond to scams.

The diagram below (which is included in the consultation paper) provides a snapshot of the proposed new framework.



[Source: Figure 1. Proposed Scam Framework – included at p8 of [Treasury's consultation paper](#).]

The due date for submissions was **29 January 2024**.

Consumer groups call for stronger consumer focus

In a joint [submission](#) in response to the government's consultation paper, nine consumer groups – the Consumer Action Law Centre, CHOICE, ACCAN, Super Consumers Australia, Westjustice, Consumer Policy Research Centre, Financial Counselling Australia, Consumer Credit Legal Service, Financial Rights Legal Centre – raise concerns that about the proposed regulatory framework from a consumer protection standpoint.

It's submitted that:

'The proposed regulatory framework outlined in the Scams – Mandatory Industry Codes Consultation Paper, will need substantial revision because it will not work effectively for consumers:

- It does not set clear guidance on when consumers will be reimbursed for their losses;
- It fails to set out clear, enforceable consumer rights;

- It does not contemplate a clear or workable process for how consumers can assert any rights or seek reimbursement;
- The lead in time for a code to become mandatory is far too long; and
- The definition of a 'scam' and 'digital communications platform' needs work'

10 recommendations for reform including a 'presumption' that banks will reimburse scam victims

To address these concerns, the submission puts forward ten recommendations to address these concerns, including the inclusion of a mandatory requirement for banks to reimburse consumers for scam losses (recommendation 2 in the submission).

The submission states that:

'At the heart of the scams regulatory framework must be liability for reimbursement resting with industry...the only workable framework that will effectively disrupt scams and protect consumers would be a presumption of reimbursement of scam losses, with industry bearing the onus of proof otherwise.'

It's further recommended that Code obligations on industry and the 'presumption' need to be higher for vulnerable consumers (recommendation 3) and that accessing reimbursement should be an easy/quick process for scam victims (five days) (recommendation 4).

Accelerated reform timeline

The submission calls for an accelerated timeline for implementation – specifically that the new framework should be 'in place and up and running before the end of 2024' – in the interests of insulating consumers from scam losses as quickly as possible.

[Sources: Consumer Action Law Centre media release 05/02/2024; Joint submission: Scams – Mandatory Industry Codes Consultation Paper]

Modern Slavery | Divided views on the scope of the proposed new Commonwealth Anti-Slavery Commissioner's role/functions

The [Modern Slavery Amendment \(Australian Anti-Slavery Commissioner\) Bill 2023](#) (Cth) (Bill) was introduced into the House of Representatives on 30 November 2023 and referred to Committee for report [21 February 2024](#). The Bill is currently before the House of Representatives – it has not yet passed either House.

Broadly the Bill would (if enacted) amend the Modern Slavery Act 2018 (Cth) (MSA) to establish and legislate the core functions of a Modern Slavery Commissioner as an independent statutory officer holder within the Attorney General's portfolio. For more on the Bill read: [Modern Slavery | Update on recent moves to strengthen Australia's modern slavery regime - POST - MinterEllison](#)



Submissions generally supportive of the proposed establishment of an Australian Modern Slavery Commissioner

There seems to be support [across the submissions](#) for the establishment of a Commissioner though opinion is divided around the scope of the Commissioner's roles/functions. We've highlighted some of the different viewpoints on this below.

AICD recommends Commissioner's functions be enhanced to enable the Commissioner to play a greater role in lifting reporting quality

In its [submission](#) to the consultation the Australian Institute of Company Directors (AICD) expresses 'strong' support for the proposed establishment of an independent Anti-Slavery Commissioner and 'its proposed functions outlined in the Bill with a clearly defined focus on education, awareness raising and coordination'.

The AICD submits that the Anti-Slavery Commissioner could play an important role in driving improvements in the quality reporting under the Modern Slavery Act 2018 (Cth). In light of this, the submission recommends that the remit/functions of the Anti-Slavery Commissioner include:

- 'Developing codes of practice and certification measures for suppliers to reduce duplicative supplier due diligence and verification processes within sectors, and provide greater certainty and assurance for entities on compliance within supply chains;
- Publishing an annual list of high risk regions, locations, industries, products, suppliers or supply chains to serve as a reference point for entities in undertaking due diligence activities;
- Developing practical guidance for high-risk sectors, NFPs, Aboriginal and Torres Strait Islander organisations and small and medium enterprises (SMEs), including by promoting best practice and drawing on successful domestic and international examples
- Conducting thematic or sectoral assessments of modern slavery statements to provide real-world insights into current practices and highlight areas of due diligence and reporting that require improvement; and
- Facilitating collaboration across industry, Government and civil society to alleviate geopolitical and other barriers to robust supply chain analysis'.

The AHRC recommends the Commissioner be empowered to enforce compliance

The Australian Human Rights Centre (AHRC) [submission](#) calls for the Commissioner's role to 'strengthened' to:

'to help monitor and enforce compliance with the [Commonwealth Modern Slavery] Act (including through the administration of penalties and infringement notices where appropriate); receive and handle complaints and undertake investigations regarding suspected instances of modern slavery. The budget for the office should be expanded to support these functions'.

Specifically, the AHRC recommends that the Bill be amended to:

- Include in the list of the Commissioner's functions: i) 'monitoring and enforcing compliance with the Act'; ii) undertaking investigations for the purpose of detecting and exposing cases of modern slavery; providing assistance and support to victims; and referring matters for criminal investigation; and iii) receiving and handling complaints about potential cases of modern slavery and facilitating access to remedy'.
- Introduce 'enforcement powers for the Commissioner, including the power to issue penalties or infringement notices'.
- 'Expand the current \$8 million budget for the office of the Commissioner to enable it to effectively carry out its functions, including the additional functions proposed in this submission'.

Business groups support the proposed (and by contrast) narrower focus on education/awareness raising

In contrast, both the Business Council of Australia (BCA) and Australian Chamber of Commerce and Industry (ACCI) submissions call for the role of the Commissioner to focused on education/awareness raising.

[The BCA:](#)

'recommends maintaining a non-punitive, educational approach towards modern slavery compliance, emphasising the importance of clear communication and support for businesses in understanding and fulfilling reporting requirements. Furthermore, the BCA recommends that the Anti-Slavery Commissioner prioritise raising awareness, fostering collaboration, and offering support, especially to small and medium-sized enterprises within larger corporate supply chains, without imposing additional bureaucratic burdens

The BCA also suggests that the Anti-Slavery Commissioner helps businesses navigate regulatory obstacles that may obstruct sector-wide cooperation in identifying and addressing modern slavery risks in supply chains.'

Similarly, the ACCI [writes](#):

'ACCI supports the passage of the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 on the basis of its understanding that the Commissioner is to play a purely educative role in its duty to promote compliance with the Act.

ACCI would be concerned if the Commissioner were to perform an investigative or complaints handling function. Indeed, ACCI believes this point is pertinently highlighted in the Explanatory Memorandum at page 12, where it is explicitly stated that law enforcement agencies conduct investigative activities related to instances of modern slavery. It should remain so.

To that end, ACCI puts forward that the focus of the Commissioner upon their taking office should be assisting business to comply with the Act in an educative manner'.

[Source: Senate Standing Committee on Legal and Constitutional Affairs: Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 [Provisions] Submissions]

Other News

[In Brief | The government has introduced new legislation into the House of Representatives - Treasury Laws Amendment \(Cost of Living Tax Cuts\) Bill 2024 \(Cth\) – proposing to give effect to the changes to the Stage 3 tax cuts announced on 25 January 2024. These reforms are proposed to commence on the first 1 January, 1 April, 1 July or 1 October to occur after the day the Bill receives Assent. The amendments are proposed to apply from the 2024-25 income year.](#)

[Source: Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024 (Cth)]

[Sources: Prime Minister Anthony Albanese media release 25/01/2024; Treasury Laws Amendment (Cost of Living Tax Cuts) Bill 2024 (Cth); Treasurer Jim Chalmers media release 06/02/2024]

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