Governance News

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

31 January 2024

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Shareholder Activism

Climate-safe retirement | Intuit Inc shareholders vote down shareholder climate proposal calling on the company to disclose how it is protecting retirement plan beneficiaries' investments from climate risk over the long term

Intuit Inc 2024 shareholder meeting was held on 18 January 2024.

A shareholder climate proposal (Proposal No 6 in the Notice, filed by As You Sow) which did not have board support was not carried – the proposal looks to have secured approximately 13% support.

For context, the proposal called on the company to:

> 'publish a report disclosing how the Company is protecting plan beneficiaries — especially those with a longer investment time horizon — from the increased future portfolio risk created by present-day investments in high-carbon companies'.

The board gave two main reasons for recommending 'against' the proposal:

- that the request is unnecessary/unwarranted because retirement plan beneficiaries already have the 'ability to invest their plan accounts according to their personal objectives and preferences, which may include objectives related to climate or other ESG-related outcomes' eg by selecting a fund comprised of companies screened for certain ESG criteria, including climate-related risk; and
- that the proposal is also unnecessary because 'Federal law requires that plan fiduciaries must select 401(k) plan investment options solely based on relevant risk-return factors in the financial interests of plan participants and beneficiaries'.

A similar proposal (also filed by As You Sow) have also been filed at Alphabet.

How (some) investors voted

Unsurprisingly given the vote outcome, a number of larger investors voted against the proposal in line with the board's recommendation. These include for example:

- Legal and General Investment Management (LGIM).

  > 'A vote AGAINST this resolution is warranted. The company's retirement plan is managed by a third-party fiduciary and employees are offered an option for investing more responsibly'.

- Norges Bank Investment Management (NBIM)
- California State Teachers Retirement System (CalSTRS)

This is not to say there was universal opposition among investors. For example:

- NYC pension funds (New York City Board of Education Retirement System, New York City Employees' Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund and Teachers' Retirement System of the City of New York) voted in support
- California Public Employees Retirement System (CalPERS) voted in support

  [Sources: Notice of 2024 Meeting; Results of Meeting]

Plastic pollution | Investors claim credit for Keurig Dr Pepper's tightening of its chemicals management policy

In 2023, 185 investors with US$10 trillion in combined assets under management signed a statement urging companies to be more ambitious in tackling plastic pollution, underlining that failure to do so (in their view) exposes companies to 'mounting plastic-related risks' eg litigation risk, regulatory risk, increased costs and reputational risks. Among other things, the statement calls on companies to address toxicity in their value chains by committing to

> 'identifying and eliminating the use of hazardous substances in products and packaging and to publicly report their progress in doing so'.

A non-exhaustive list of the companies singled out by investors is included in the appendix to the statement here.

Green Century has announced that one of the companies listed in the statement - Keurig Dr Pepper – has expanded its chemical management policy to include 'forever chemicals PFAS, heavy metals and a family of plastic additives called bisphenols' in response to the call from investors.

Green Century makes clear that this action by Keurig Dr Pepper is not, in itself, enough to address investor concerns. Green Century shareholder advocate Douglass Guernsey comments:

> 'We appreciate companies expanding chemical management policies, but it is really a bandage on a broken system…What we need is an absolute reduction of single-use plastic, replaced with tested solutions like reusable bottles and plastic-free packaging.'
>
> [Source: Green Century media release 25/01/2024]

Walgreen shareholders (reportedly) vote down 'living wage' proposal

As part of a broader campaign to push companies to pay their workers, contractors and subcontractors a 'living wage', The Shareholder Commons (TSC), together with ShareAction, filed a shareholder proposal (Proposal 7 in the Notice) at Walgreens Boots Alliance Inc calling on the company's board and management to:

> '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'.

TSC and ShareAction submitted, ahead of the meeting that the requested change (which is not supported by the Walgreens board) is needed to:

> 'protect Walgreens' shareholders from a practice [ie payment of less than a 'living wage' to its workforce] that focuses on Walgreens' enterprise value but ignores broader economic concerns, despite the correlation of broad economic performance and the portfolio values of the Company's diversified shareholders. Without the requested change, shareholders will continue to absorb the costs of Walgreens' underpayment of its workers in their portfolios'.

The proposal, was one of five shareholder ESG proposals on a range of issues (all of which are opposed by the board) to go to a vote at the company's 25 January 2024 meeting.

In a statement ShareAction reports that the living wage proposal failed to secure the necessary support to be carried (the official vote results have yet to be released by the company).

ShareAction and TSC expressed disappointment in the outcome in light of the rising numbers of people unable to afford basic necessities.

Sara Murphy, Chief Strategy Officer at The Shareholder Commons also underlined the importance of the issue from an investor perspective.

> '…we know investors are increasingly realizing that their clients and beneficiaries pay the price when portfolio companies underpay their workers. A growing body of asset owners and managers understand that stewardship for a living wage is a necessary element of diversified portfolio value optimisation.'
>
> [Sources: The Shareholder commons media release (accessed) 17/01/2024; ShareAction media release 25/01/2024]

Plastic pollution | As You Sow has withdrawn a shareholder EPR proposal at Hormel

As You Sow has filed eight shareholder consumer packaging-related proposals so far in 2024 as part of a broader campaign to pressure companies to act to reduce plastic waste.

Of these, one proposal has already been withdrawn. This proposal - an extended producer responsibility proposal filed at Hormel - called on the board to 'issue a report…describing opportunities for Hormel to support a circular economy for packaging'. As You Sow states that the proposal was withdrawn after agreement was reached with the company – no further details are provided.

The company has not (to our knowledge) issued its own statement on the issue.

> [Source: As You Sow Consumer Packaging shareholder proposals 2024 [accessed 29/01/2024]

ICCR says Exxon's move to sue shareholders to block a Scope 3 climate proposal could have undesirable (and costly) consequences for companies as well as shareholders

Scope 3 shareholder proposal filed (again) at Exxon

As previously reported (see: Governance News 24/01/2023 at p8) ahead of ExxonMobil's upcoming shareholder meeting, Activist group Follow This and Arjuna capital have filed a shareholder Scope 3 (value chain/supply chain emission) proposal at the company calling for it to:

> 'go beyond current plans, further accelerating the pace of emission reductions in the medium-term for its greenhouse gas (GHG) emissions across Scope 1, 2, and 3, and to summarise new plans, targets, and timetables'.

Follow This credits similar proposals filed at other majors in previous years with pushing them to act on the issue – even where the proposals did not secure majority support. A proposal filed by Follow This at Exxon in 2023 secured 11% support.

Exxon has filed a complaint in a Texas court in an attempt to block the proposal

According to media reports (eg The AFR, WSJ, The Guardian) Exxon has taken the unusual step of filing a complaint in a Texas Court seeking confirmation (in the form of a judicial declaration) that the proposal can be properly excluded. If granted, this would mean that Exxon could block the proposal from proceeding to a vote.

The more usual course is for companies to apply to the Securities and Exchange Commission (SEC) for approval to block a proposal in reliance on certain accepted criteria for exclusion including, as reportedly argued in the Texas complaint, that the proposal is excludable because the request amounts to micromanaging the company.

To be clear, media reports disagree on whether Exxon has also applied to the SEC for approval to exclude the proposal (in addition to filing the complaint with a Texas court).

ICCR weighs in…

In a statement the Interfaith Centre for Corporate Responsibility (ICCR) has cautioned that Exxon's strategy may lead to undesirable and ultimately costly knock-on effects for both companies and shareholders. ICCR writes:

> 'If successful it [ie Exxon's decision to file a complaint with the Texas Court] could usher in a new era where companies sue investors to prevent shareholder debate on important issues of disagreement. Should companies move in this direction, we would expect to see investors increasingly invoke strategies such as votes against directors and litigation in the form of shareholder derivative lawsuits to resolve disputes with boards and management -- a slippery and very costly slope for all parties… This lawsuit is yet another attempt by Exxon to distract from its corporate responsibility to be transparent about its climate impacts, much to the detriment of investors and the public'.
>
> [Sources: FollowThis media release 22/01/2024; ICCR media release 24/01/2024]

Investors reject shareholder fossil fuel resolutions filed at two Australian big banks

- Market Forces filed similar shareholder resolutions at NAB and Westpac in 2023 calling on the banks to provide additional disclosure around the steps being taken to ensure the projects they finance align with their climate transition plans.
- Each of the resolutions take the usual form ie a special resolution seeking the necessary constitutional amendment to enable shareholders to bring ordinary resolutions, accompanied by a separate and contingent ordinary resolutions containing the substantive request outlined above.

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

non-binding shareholder resolution framework'. You can find ACSI's 2017 policy paper on this topic here: Shareholder-resolutions-in-Australia.Oct17.pdf (acsi.org.au).]

- In each case, the resolutions were not supported by the board, and in each case, the constitutional amendment failed to be carried. As a result, the substantive resolutions were not formally put to the meetings. The table below provides more detail on the vote result in each case.

<table>
<tr><th></th><th>VOTE RESULT</th><th>HOW (SOME) INVESTORS VOTED</th></tr>
<tr><td rowspan="2">NAB</td><td>▪ Constitutional amendment (Resolution 5a in the Notice): 5.27% support</td><td>▪ Norges Bank Investment Management (NBIM) voted against
▪ California State Teachers Retirement System (CalSTRS) also voted against
▪ In contrast, Legal and General Investment Management (LGIM) voted in support in the interests of supporting shareholder rights.
▪ California Public Employees Retirement System (CalPERS) also voted in support</td></tr>
<tr><td>▪ Substantive resolution (Resolution 5b in the Notice): (approximately) 28.4% support</td><td>▪ 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'.
▪ California State Teachers Retirement System (CalSTRS) also voted against
▪ LGIM voted in support stating that:
'LGIM expects companies to be taking sufficient action on the key issue of climate change. While we acknowledge the Company's disclosures on sector policies and emissions reduction targets in this regard, we believe that additional reporting on how this is assessed in practice and any timelines associated with this in light of the Company's existing commitments is considered beneficial to shareholders'.</td></tr>
<tr><td rowspan="2">Westpac</td><td>▪ Constitutional amendment (Resolution 6a in the Notice): 6.18% support</td><td>▪ Norges Bank Investment Management (NBIM) voted against
▪ California State Teachers Retirement System (CalSTRS) voted against
▪ NYC pension funds voted against.
▪ California Public Employees Retirement System (CalPERS) voted in support
▪ Legal and General Investment Management (LGIM) voted in support in the interests of supporting shareholder rights.</td></tr>
<tr><td>▪ Substantive resolution (Resolution 6b in the Notice): 21.49% support</td><td>▪ Norges Bank Investment Management (NBIM) voted against
▪ California State Teachers Retirement System (CalSTRS) voted against
▪ California Public Employees Retirement System (CalPERS) voted in support
▪ NYC pension funds voted in support.
▪ LGIM voted in support stating that:
▪ 'A vote in favour is applied as LGIM expects companies to be taking sufficient action on the key issue of climate change. While we</td></tr>
</table>

	VOTE RESULT	HOW (SOME) INVESTORS VOTED
		acknowledge the Company's disclosures on sector policies and emissions reduction targets in this regard, we believe that additional reporting on how this is assessed in practice in light of the Company's existing commitments is considered beneficial to shareholders'

'Say on Climate' | 90%+ of Westpac shareholders supported the banks' climate plan

Separately, the management-proposed 'say on climate' resolution at Westpac – an advisory resolution allowing investors to vote on the bank's climate change position statement and action plan (Proposal 5 in the Notice) – was carried with 92.31% support.

The proposal had the support of a number of investors including:

- Norges Bank Investment Management (NBIM)
- California State Teachers Retirement System (CalSTRS)
- NYC pension funds (new York City Board of Education Retirement, New York City Employees Retirement System, New York City Fire Pension Fund, New York City Police Pension Fund, Teachers Retirement System of the City of New York)

However,

- Legal and General Investment Management (LGIM) – which voted in support of the shareholder resolutions at the bank - voted against stating that:

  > 'A vote AGAINST this proposal is applied as LGIM expects companies to introduce credible transition plans, consistent with the Paris goals of limiting the global average temperature increase to 1.5°C. While we positively note the company's net-zero commitments and welcome the opportunity to voice our opinion on the bank's climate transition plan, we highlight some concerns with the scope of targets and disclosures. In particular, - The bank has not committed to establish science-based targets; and - The sector policies notably on certain fossil fuels (such as unconventional oil and gas) and existing business relationships remains limited in scope. More specifically, the company's position on power generation is quite high level and particularly narrow in scope'.

- California Public Employees Retirement System (CalPERS) abstained from voting

[Sources: Westpac: Notice of Meeting; Results of Meeting; NAB: Notice of meeting; Results of meeting]

In Brief | PRI signatory and BP shareholder Bluebell Capital Partners has reportedly written to BP, calling on the company to wind back its clean energy strategy on financial grounds

[Source: The Guardian 30/01/2024]

Disclosure and Reporting

GRI launches updated biodiversity reporting standard

- Following consultation, the Global Reporting Initiative (GRI) released a new biodiversity standard - GRI 101: Biodiversity 2024 – ahead of its formal commencement from **1 January 2026**. The new standard updates and will replace existing GRI 304: Biodiversity 2016.
- The new standard, aims to support organisations to meaningfully disclose their biodiversity impacts across their operations and value chain.
- GRI describes the new standard as 'building on' the UN Kunming-Montreal Global Biodiversity Framework (GBF), the Science Based Target Network (SBTN) and the Taskforce on Nature-related Financial Disclosures (TNFD).
- Over the next two years, GRI plans to pilot GRI 101 with 'early adopters'.

  [Source: GRI media release 25/01/2026]

Enhancing trust in sustainability disclosures and reducing greenwashing: IESBA consults on proposed global standards for sustainability assurance

- Global standard setter the International Ethics Standards Board for Accountants (IESBA) is consulting on two proposed draft standards - International Ethics Standards for Sustainability Assurance (including International Independence Standards) (IESSA) and Using the work of an External Expert - that together, 'aim to foster greater trust in all publicly communicated sustainability information through the application of a consistent ethical approach'.
- IESBA has also flagged that plans to

  'stipulate to national accreditation bodies around the world that the IESBA's proposed IESSA are to be used when accrediting and authorising conformity assessment bodies to carry out assurance work on corporate sustainability disclosures'.

(Indicative) timing

- The due date for submissions on the Sustainability ED is 10 May 2024.
- The due date for submissions on Using the Work of an External Expert ED is 30 April 2024.
- IESBA intends to finalise the changes by the end of the year (2024). No effective dates are stipulated – it's envisaged that these will be set 'in coordination with' the International Auditing and Assurance Standards Board (IAASB).

  [Source: IESBA media release 29/01/2024]

Mandatory Climate Disclosure | AICD expresses support for the proposed 'interim modified liability framework'

The government is currently consulting on a Bill to establish a mandatory climate disclosure regime

- The Australian government is progressing plans to phase in a new, internationally aligned, mandatory climate disclosure reporting regime for heavy emitters, large listed companies, large private companies and superannuation funds/asset managers, with the release of a draft Bill for consultation (read: Mandatory Climate Reporting in Australia | Draft Bill released for consultation - Technical update - MinterEllison). If enacted, the draft Bill would establish the framework for the proposed new disclosure regime.
- The new climate disclosure (and assurance) requirements are planned (subject to the passage of the legislation) to be phased in, starting with certain large entities from **1 July 2024** (though the government has called for feedback on whether this should be deferred to 1 January 2025).
- The due date for submissions on the draft Bill is **9 February 2024**.

The AICD has expressed support for the proposed 'Transitional Relief' mechanism

Commenting briefly on the draft Bill, the Australian Institute of Company Directors (AICD) expresses support for the introduction of stronger requirements, underlines the scale and complexity of the challenge this poses for organisations and (in light of this) the importance of ensuring liability settings are appropriately calibrated. The AICD writes:

> 'Reporting under the detailed and granular ISSB standards is complex and requires entities to make projections over long-time horizons, often on the basis of limited data and inherently uncertain estimates or assumptions. The nature of forward-looking climate statements heightens liability risks faced by Australian directors providing sign-off on corporate disclosures, given unique aspects of Australian law.
>
> The AICD is therefore pleased to see the Government's Exposure Draft retain the Transitional Relief mechanism – for which we were a strong proponent. It is a sensible measure that provides the opportunity for reporting practices to evolve and incentivises organisations to make high quality, comparable disclosures, without the undue risk of private litigation'.
>
> [Note: For context, the 'Transitional Relief' mechanism referred to above is the proposal in the draft Bill that for the first three years of the regime, only the Australian Securities and Investments Commission (ASIC) would be able to bring civil proceedings (eg actions brought under the misleading and deceptive conduct provisions) in relation to certain statements – statements concerning Scope 3 (value chain) emissions and/or scenario analysis - made in sustainability reports. ASIC would also be limited in the remedies it could seek - the only remedy that could be sought would be an injunction or declaration. This means that, companies and officers would be temporarily shielded from civil actions (eg misleading or deceptive conduct claims) brought by private litigants (see: s1705B of the Draft Bill)]

Writing in The AFR, AICD Managing Director and CEO Mark Rigotti also emphasises the importance of ensuring liability settings are designed appropriately if the policy objective of the draft Bill – which he sums up as 'high quality [climate] disclosures on a best endeavours basis' – is to be achieved. Failure to insulate companies from litigation could, Mr Rigotti cautions, result in companies 'pulling back on their disclosures'.

Further, while supportive of the government's proposed three year regulator-only enforcement period, Mr Rigotti raises concerns that as currently drafted, it does not extend to transition plans.

Finally, though supportive of a phased approach to implementation of the new requirements, Mr Rigotti questions whether the Bill would impose new obligations on too broad a group of organisations, rather than focusing on 'the big end of town'.

> [Sources: AICD article: Mandatory climate reporting draft legislation released for consultation 18/01/2024]

In Brief | Nature risk reporting frameworks: New report co-authored by the United Nations Environment Programme World Conservation Monitoring Centre and the United Nations Environment Programme Finance Initiative offers a comparison of seven leading nature-related assessment and disclosure frameworks (including the Recommendations of the Taskforce on Nature-related Financial Disclosures released in September 2023)

> [Source: Full text report: Accountability for Nature: Comparison of Nature-related Assessment and Disclosure Frameworks and Standards January 2024]

Institutional Investors and Stewardship

UK FRC publishes updated guidance for boards on the recently released, 2024 Corporate governance Code

On 22 January 2024, the UK Financial Reporting Council (FRC) released updates to the UK Corporate Governance Code (the Code) (read: Governance News 25/01/2024 at p16).

The regulator has now released extensive (80 pages) of new Guidance aimed at

> 'stimulat[ing] boards' thinking on how they can carry out their role in governing the company effectively'.

The FRC emphasises that the guidance does not form part of the Code. The FRC states:

> 'The guidance is not mandatory, and not part of the Code itself, and is not prescriptive. It contains suggestions of good practice to support directors and their advisors in applying the Code'.

The guidance consolidates and will supersede previous published FRC guidance - The Guidance on Board Effectiveness, Guidance on Audit Committees and Guidance on Risk Management and Related Financial and Business Reporting.

A key addition to the guidance is the inclusion of a new section covering 'good practice for the successful management of board committees'. This section includes 'foundational information relating to the make-up and general approach of board committees' eg Nomination, Audit, Remuneration, Risk and Sustainability Committees.

> [Source: FRC media release 29/01/2024]

Blackrock's five engagement priorities unchanged from last year, 'financial resilience' highlighted as an area of particular focus

BlackRock has released updated engagement priorities and proxy voting policy updates, together with a new 'viewpoint' on financial resilience as well as new 'commentary' outlining its approach to natural capital and climate-related risk.

Key Takeaways

BlackRock's five engagement priorities for 2024 – 1) board quality and effectiveness; 2) strategy, purpose, and financial resilience; 3) incentives aligned with financial value creation; 4) climate and natural capital; and 5) company impacts on people – are 'consistent with those from prior years'.

From an engagement perspective, BlackRock states that there are

> 'no material changes in our approach to engaging companies on these themes'.

On the topic of 'climate and natural capital' BlackRock's position is essentially unchanged.

BlackRock states that it's focus remains on long-term value creation – including on understanding how companies are managing their material risks/opportunities, including climate and nature-related risks/opportunities – consistent with its fiduciary obligation to clients. BlackRock states:

> 'As an asset manager, BlackRock's approach to climate-related risks, and the opportunities presented by the low-carbon transition, is based on our fundamental role as a fiduciary to our clients. The money we manage is not our own – it belongs to our clients, many of whom make their own asset allocation and portfolio construction decisions. Our role is to help our clients navigate investment risks and opportunities; it is not our role to engineer a specific decarbonization outcome in the real economy.
>
> In this role, we want to hear from the companies in which we invest for our clients regarding the impact climate-related risks and opportunities and the low-carbon transition is expected to have on their strategies and long-term business models. We engage on this topic because the way in which companies navigate material climate-related risks and adapt through the low-carbon transition may have a direct financial impact on our clients' investment outcomes and financial well-being'.

Disclosure expectations in this context:

- BlackRock suggests that the International Sustainability Standards Board (ISSB) standards, IFRS S1 and S2 (read: 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) may 'provide companies with a useful guide' to preparing their disclosures but makes clear that companies may 'phase in' reporting under the ISSB standards 'over several years' or report using 'different standards'. BlackRock asks that companies 'highlight the metrics that are industry or company specific'.
- BlackRock also states that it would be 'helpful' for companies to disclose 'any relevant global climate and other sustainability-related standards adopted, the industry initiatives in which they participate, any peer group benchmarking undertaken and any assurance processes to help investors understand their approach to sustainable and responsible business practices'.

- Scope 3 (value chain) emissions: BlackRock's position on Scope 3 emissions is unchanged – disclosure of Scope 3 emissions is not a baseline expectation in light of the 'methodological complexity, regulatory uncertainty, concerns about double-counting, and lack of direct control by companies'. Having said this, BlackRock states that it 'welcome[s] disclosures and commitments companies choose to make regarding scope 3 emissions and recognise[s] these are provided on a good-faith basis as methodology develops'.
- In terms of expectations around when disclosures are released, BlackRock acknowledges that companies may need 'additional time after their fiscal year-end to accurately collect, analyse, and report this data to investors' but 'encourages' companies to release their climate and other sustainability disclosures 'sufficiently in advance of the annual meeting, to the best of their abilities'.
- From a voting perspective, BlackRock states that it will

> 'express any concerns through our voting where a company’s actions or disclosures do not seem adequate in light of the materiality of the business risks'.

Two separate 'commentary' documents provide more detail see: Climate-related risks and the low-carbon transition; and Our approach to engagement on natural capital.

Focus on how companies are strengthening financial resilience

BlackRock submits that:

> 'A set of mega forces – large, long-term structural shifts – are changing how economies are structured, how consumers and governments spend, and how companies operate'.

These are identified as:

- **'Digital disruption and artificial intelligence (AI)'**: BlackRock sees opportunities for generative AI solutions to Generative AI-based solutions to streamline operations, improve customer experience and enable new capabilities, in turn driving increased productivity and profitability. BlackRock also flags the potential risks – eg data privacy and cybersecurity risks.
- **'Geopolitical fragmentation and economic competition'**: BlackRock writes:

  > 'Geopolitical fragmentation and mounting competition between countries are rewiring globalisation. We see companies reconfiguring their supply chains to adapt to growing regulation and mitigate risk in their operations, often increasing costs. At the same time, we also see them capitalising on industrial policy to spur innovation and diversify their business models'.

- **'Transition to a low-carbon economy':** BlackRock is looking to understand how companies are managing both the risks and opportunities of the transition to a low carbon economy.
- **'Demographic divergence'**: BlackRock observes that aging workforces in 'major economies' is making 'labour more scarce and costly'. In consequence, attracting and retaining talent, exploring opportunities for automation or offshoring of operations to emerging market economies with younger populations.

Corporate governance is a 'competitive advantage'

BlackRock considers that:

> 'Amid this structural transformation, our view is that robust corporate governance will be a competitive advantage in helping companies respond. We have observed corporate leaders adapt their practices to better position their companies for change'.

BlackRock has observed that companies are taking steps to 'adapt their practices to better position' themselves for change including through:

- 'creating structures that enable robust and dynamic decision-making' eg reviewing board composition to ensure the relevant skills - aligned with new opportunities – are represented; leveraging subcommittee structures of external advisors to deepen boards' understanding of emerging topics (among others).
- Investing in human capital management eg upskilling existing staff, 'evolving' reward structures to attract/retain talent with in-demand skills
- 'Staying connected with investors' by 'proactively communicating how they are adapting to the opportunities and risks that most materially impact their business models'

Questions for companies

Page 13 of the 'viewpoint' document on financial resilience includes a table setting out questions that BlackRock may (as appropriate) ask companies to better understand how they are strengthening their financial resilience, adapting their business models and 'positioning for change' (including at board/leadership level).

These questions include:

- 'What are the company's capital allocation priorities and how have these been affected by the new regime?'
- 'How is management identifying and assessing the potential impacts on the company's business model arising from structural changes that are relevant to their business?'
- 'How does the board develop its knowledge and understanding of the structural changes impacting the company and the implications for the long-term strategy and business model?'
- 'How does the board ensure it has the appropriate mix of skills and experience relevant to the future direction of the company?'
- 'How is leadership guiding the workforce through change?'

[Sources: BlackRock Engagement Priorities January 2024; BlackRock Investment Stewardship Global Principles January 2024; BlackRock Financial resilience in a new economic regime January 2024]

Ontario Teachers' Pension Plan sets 'climate literacy' as a baseline expectation for audit committees

Global investor Ontario Teachers' Pension Plan's (OTPP) 2024 proxy voting guidelines have a strong emphasis on oversight of climate risk – especially by audit committees.

The updated guidelines make clear that climate literacy is a baseline expectation for audit committee members. The guidelines state:

> 'We expect directors on audit committees to evaluate the impact of climate when reviewing budgets, performance and M&A activity. Audit committee members need to be climate-competent and understand where knowledge gaps exist, taking appropriate steps to gain climate literacy. It is incumbent upon the Audit Committee to understand the company's environmental impact and related reporting requirements. Audit committees also need to adapt their responsibilities for risk management, internal controls and assurance to account for climate considerations. This requires a time investment from directors, ensuring there are reliable information flows from management and educating themselves on leading practices in the market as well as developing a good working relationship with their external auditor'.

The guidelines also flag that OTPP will:

- **Consider voting in support of shareholder environmental proposals** where the proposal would 'strengthen the company's climate change-related practices'. The guidance states that OTPP 'may support' shareholder proposals dealing with the following six issues:
  - 'improving climate change governance practices and board oversight
  - the completion of a materiality assessment regarding company's climate exposure with the intention of having the company better understand their climate risks
  - the stronger disclosure of decision-useful climate related information
  - the monitoring and management of climate change related risks and opportunities
  - additional action by the company to better align their business with the transition to a low -carbon economy aligned with the Paris Agreement including net-zero initiatives
  - the alignment of reporting with the ISSB's SASB Standards and the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD)'
- **'Typically' support shareholder human capital management proposals** calling on the company to:
  - 'improve its governance and oversight of human capital management;
  - develop policies related to, but not limited to anti-discrimination, freedom of association, diversity, equity and inclusion, pay practices, supplier codes of conduct, and employee health and safety'.
- **'Typically' support shareholder proposals calling for improved board oversight of political expenditure** and activities. OTPP also expects companies to

  > 'provide regular disclosure on political expenditures, rationales for political expenditure, dues to trade associations, and rationale for association dues paid'.
- **Voting against members of the governance committee or the entire board if the board fails to act on shareholder proposals** that receive majority support and/or shareholder proposals that receive 'meaningful' (ie 30% or more) support without providing a 'convincing rationale' as to why the board determined that taking action would not be in the best interests of the company.
- **Voting against individual director or directors**, Chair or members of board committees where OTPP considers there has been failure to

  > 'adequately address material or egregious risks stemming from poor management and oversight of environmental or social issues'.

  [Source: Ontario Teachers Pension Plan media release 18/01/2024]

ESG

Unlocking climate finance in APAC: IMF paper outlines a number of strategies including the suggested phase out of fossil fuel subsidies

A new paper - Unlocking Climate Finance in Asia-Pacific – released by the International Monetary Fund outlines suggested steps/strategies to 'unlock climate finance' in region and overcome existing challenges to doing so.

Governments

Among the key 'focus' areas for governments identified in the paper, is the suggested phase out of fossil fuel subsidies and expansion of carbon pricing. It's also suggested that to 'garner public buy-in, revenues generated should be recycled to promote investment in green technology, jobs and growth, while supporting vulnerable households'.

Likewise the paper suggests government should focus on the establishment of a

> 'comprehensive strategy with strong institutional oversight and coordination to enhance the framework on data, taxonomies, and disclosures'.

Central banks and financial supervisors

The paper suggests that central banks and financial supervisors across the region should 'coordinate' to:

- 'support the adoption of global and interoperable disclosure standards to enhance transparency and consistency';
- 'strengthen climate risk analyses and reporting, and incorporate climate-related financial risks into prudential frameworks'
- 'develop climate labels for sustainable investment funds and shift the focus of environmental, social, and governance scores to better capture sustainability and climate impact to foster trust in the evaluations'.

On this last point, WEF submits that:

> 'Developing climate labels for sustainable investment funds and shifting the focus of ESG scores to better capture sustainability and climate impact would foster trust in the evaluations'.
>
> [Source: Unlocking Climate Finance in Asia-Pacific DP/2024/001 January 2024]

Greens Senator calls for federal fossil-fuel subsidies to be redirected to funding community transition projects

Greens Senator Penny Allman-Payne has called for the $11 billion in annual federal fossil-fuel subsidies be 'phased out and the money redirected to accelerating a community-led transition to renewable energy' to accelerate the pace of transition and ensure equitable stakeholder outcomes.

Senator Allman-Payne comments:

> 'The Inflation Reduction Act in the US shows what's possible when a country seeks to let loose investment in clean energy…We can't leave climate action up to the same unchecked market forces that have caused the climate crisis in the first place. That's why the energy transition needs to be driven by public investment, community- and government-led, with full, transparent and timely engagement, including the free, prior and informed consent of Traditional Owners, and protections for workers'.
>
> [Source: Greens Senator Penny Allman-Payne media release 25/01/2024]

Woodside announces board changes, emphasises decarbonisation

- In a 24 January announcement to the market, Woodside announced the appointment of Ashok Belani as a non-executive Director and member of the Audit & Risk, Sustainability and Nominations & Governance Committees. Announcing this, Woodside Chair Richard Goyder underlined Mr Belani's 'extensive expertise in new energy and petroleum sector decarbonisation' including what Mr Goyder described as Mr Belani's 'accomplished record in leading decarbonisation technology at SLB (formerly Schlumberger)'. Mr Belani will stand for election as a non-executive Director at the Annual General Meeting in April 2024.

- In addition, Woodside announced the 'anticipated' retirement of two long-serving directors from the board at/before the 2024 AGM - Frank Cooper (Chair of the Audit and Risk Committee) and Gene Tilbrook (Chair of the Human Resources and Compensation Committee from 2019-2023).
- Committee membership changes:
  - Arnaud Breuillac replaced Mr Tilbrook as Chair Human Resources & Compensation Committee, effective 7 December 2023. Mr Tilbrook remains a member of the Human Resources & Compensation Committee.
  - Mr Ben Wyatt joined as a member of Woodside's Audit & Risk Committee and ceased as a member of the Sustainability Committee, effective 7 December 2023.
- The changes follow a 35% 'against' vote in 2023 against a Woodside board member (reportedly) on climate grounds. Ahead of the vote, the Australasian Centre for Corporate Responsibility (ACCR) together with investors Vision Super and Betashares, co-filed members' statements with the company expressing concerns about the quality of climate oversight/governance and calling for three members of the sustainability committee, 'to be held to account' for the boards' climate strategy. The changes also come ahead of an expected non-binding, management proposed 'say on climate' vote at the company's 2024 AGM.

[Source: Woodside ASX announcement 24/01/2024]

In Brief | Reportedly the NT government has (for the first time) launched legal action against the owners of a station over (alleged) unapproved land clearing

[Source: ABC News 29/01/2024]

In Brief | Anti-ESG backlash continues in the US: Texas Attorney General announces Barclays has been banned from participating in Texas's bond market over the banks' failure to respond (within time) to the Attorney General's request for 'more information' about the banks' ESG commitments

[Source: Texas Attorney General Ken Paxton media release 26/01/2024]

In Brief | Huge (and mounting) cost of extreme weather events in Australia: The Insurance Council of Australia puts the cost of claims from ex-Tropical Cyclone Jasper and the Christmas and New Year storms at $743 million+ with more claims relating to these events expected

[Source: Insurance Council of Australia media release 24/01/2024]

Remuneration

Semler Brossy Report: High approval and low failure for 'Say on Pay' in 2023

Key Takeouts

- The report highlights that the average level of support for 'Say on Pay' resolutions at Russell 3000 companies returned to 90% (up from its brief dip below the 90% mark last year)
- The failure rate for 'Say on Pay' resolutions was also down from 3.7% last year to 2.1% (the lowest fail rate since 2017)
- The report also highlights the drop in support for shareholder E&S proposals from the high water mark in 2021

Semler Brossy's latest report analyses vote results at 2356 Russell 3000 companies and 488 S&P 500 companies over the past year and offers points of comparison with previous years. Our key takeaways from the report are below.

'Say on Pay'

- Looking at Russell 3000 companies, Semler Brossy highlights that approval remains high, and was up on last year:
  - The average approval rate for 'say on pay' resolutions in 2023 was back to 90%, up from its brief dip to 89.2% in 2023. For context, the average approval rate has been above 90% every year since 2013 except for 2023.
  - The 'failure' rate for 'say on pay' proposals was also down on last year – 3.1% of resolutions failed in 2023 vs

2.1%. For context, this is the lowest fail rate since 2017.

- Looking at it by sector, the failure rate was highest in the Communication Services sector (5% failure rate), Health Care and Information Technology sectors (both 4%), and lowest in the Utilities sector (no resolutions failed to pass)

- Leading causes of failure to approve 'say on pay' resolutions:
  - The report highlights multiple factors for failure in each case. The most prevalent leading 'likely' causes of failure to approve resolutions identified are 'pay and performance relation' and 'problematic pay practices'
  - 'Shareholder outreach and disclosure' is the least prevalent factor.

Equity plan proposals

- The average level of support for equity proposals in 2023 was 86.7% (down from 89.4% in 2023)
- The report flags that the average level of support for equity proposals was significantly lower at companies where the ISS issued an 'against' recommendation (72%) vs companies that received a 'for' recommendation (92%)

Director Elections

- According to the report, the average support for director nominees standing for election/reelection remained high in 2023 at 94.6% (slightly up from 94.5% in 2023). For context, the average level of support for directors has remained within a fairly narrow range (94.5%-95.1%) over the 2019-2023 period.
- The report flags that the average level of support for the directors of companies where the 'say on pay' resolution in the previous year failed, is lower at 90%
- The average level of support for female directors is higher at 95.2% than it is for male directors (average of 94.4% support)

E& S resolutions

Environmental resolutions

The report highlights that support for environmental and social resolutions continued to slip backwards in 2023.

Environmental proposals:

- Just 2% of the 106 environmental resolutions that went to a vote in 2023 received 50% or more support
- The median level of support for environmental resolutions was 18%, down from a high of 46% in 2021

Social resolutions:

- Of the 258 social proposals that went to a vote in 2023, five received 50% or more support
- The median level of support for social proposals in 2023 was 15% (down from a high of 32% in 2021).

[Source: Semler Brossy 2023 Say on Pay Report]

Boards and Directors

UK FRC publishes updated guidance for boards on the recently released, 2024 Corporate governance Code

On 22 January 2024, the UK Financial Reporting Council (FRC) released updates to the UK Corporate Governance Code (the Code) (read: Governance News 25/01/2024 at p16).

The regulator has now released extensive (80 pages) of new Guidance aimed at

> 'stimulat[ing] boards' thinking on how they can carry out their role in governing the company effectively'.

The FRC emphasises that the guidance does not form part of the Code. The FRC states:

> 'The guidance is not mandatory, and not part of the Code itself, and is not prescriptive. It contains suggestions of good practice to support directors and their advisors in applying the Code'.

The guidance consolidates and will supersede previous published FRC guidance - The Guidance on Board Effectiveness, Guidance on Audit Committees and Guidance on Risk Management and Related Financial and Business Reporting.

A key addition to the guidance is the inclusion of a new section covering 'good practice for the successful management of board committees'. This section includes 'foundational information relating to the make-up and general approach of board committees' eg Nomination, Audit, Remuneration, Risk and Sustainability Committees.

[Source: FRC media release 29/01/2024]

Financial Services

Top Story | APRA supervisory and policy priorities for H1 2024 released

GRCA, operational resilience, climate and cyber included among APRA's top supervision and policy priorities for the next six months.

Ahead of the release of APRA's 2024-25 Corporate Plan (which is due for release at the end of August), the regulator has released a letter to industry outlining its supervision and policy priorities for the next six months. We've highlighted the key points below.

Six cross-sector priority areas

1. Governance, Culture, Remuneration, Accountability (GCRA)

APRA has flagged plans to:

Commence a 'broad review of governance requirements': The review will include reviewing governance requirements in Prudential Standard CPS 510 Governance, Prudential Standard CPS 520 Fit and Proper (as well as in other relevant standards). Beginning in the second quarter of 2024, APRA will begin to consult with industry, ahead of the planned release of a discussion paper.

Sharpen its focus on GRCA in supervisory engagements: The letter states that:

> 'GCRA components will be heightened in supervisory engagements, including for entities that are implementing material risk transformation projects'.

Undertake risk culture surveys: Insurers requested to be involved in the next round of risk culture surveys will hear from APRA in the first half of 2024.

Run a 'Pulse survey' pilot: From 'the middle of 2024', APRA plans to run a pilot round of 'pulse surveys' for selected entities. This will involve participating entities conducting their own surveys (including 'a small number of key risk culture questions' supplied by APRA) and providing their findings to APRA.

2. Operational resilience (CPS 230 implementation)

Implementation of new cross industry prudential standard CPS 230 Operational Risk Management (CPS 230) which will come into effect from 1 July 2024 is also highlighted as a priority. For more on CPS 230 read: APRA's new operational risk standard finalised - POST - MinterEllison and CPS 230: The Practical Playbook - Insight - MinterEllison

To support preparation for implementation of the new requirements:

- **APRA plans to finalise guidance (CPG 230)** to support entities to transition to the new requirements 'in the first half of 2024'. APRA states that the finalised guidance will include guidance to 'support implementation for smaller, less complex entities'.
- **APRA reiterates that entities should be proactive** in preparing for the new requirements including through 'identifying critical operations and material service providers and building organisational awareness'.
- **Entities should 'expect further engagement** on operational resilience through 2024 to assist readiness' including 'meetings with selected entities' and 'webinars to assess and assist readiness'. APRA also plans to host information roundtables to help prepare entities for the new requirements in CPS 230.

3. Climate risk

APRA has flagged plans to:

Undertake a review of CPG 229: The letter flags that APRA is reviewing the effectiveness of Prudential Practice Guide CPG 229 Climate Change Financial Risks (CPG 229) and plans to engage with industry as part of the review process. 'Embedding climate risk considerations clearly in risk management frameworks' is identified as a key focus of the review. For clarity, APRA confirms that it does not intend to commence formal consultation on any changes in the first half of 2024.

Roll out a (Voluntary) Climate Risk Self-Assessment survey: Entities will be asked to participate in the voluntary exercise. Participation will, APRA states,

> 'provide entities with insights on their alignment to the principles in CPG 229 as well as allow for valuable industry-level insights into the ongoing maturity of climate risk management'.

Continue work on the insurance Climate Vulnerability Assessment (CVA) which will assess the potential impacts of climate change on home insurance affordability out to 2050 is also a priority over the next six months.

4. Financial Accountability Regime (FAR) implementation

The FAR which will replace and expand on the existing BEAR will come into effect from March 2024 for banks and from March 2025 for the insurance and superannuation sectors (read: FAR status update: FAR Bills now law - POST - MinterEllison).

To support entities in their preparations for the changes APRA and ASIC plan to:

- (For banks): Release the Regulator rules and Transitional Rules
- (For insurers and superannuation funds): Release an 'information package in early 2024' and host a series of webinars.

5. Recovery and Resolution

Implementation of Prudential Standard CPS 190 Recovery and Exit Planning and Prudential Standard CPS 900 Resolution Planning is flagged as a priority over the next six months. For context, CPS 190 and CPS 900 came into effect for banks and insurers on 1 January 2024 and will commence for superannuation licensees from 1 January 2025.

APRA's letter states that:

> 'Some banks and insurers may need to refine their approach to recovery and exit planning.'

Ahead of the commencement of the new requirements for superannuation licensees, APRA has said it plans to engage 'to drive an uplift in industry approaches to meeting the expectations in the new standards'.

APRA also plans to ask 'SFIs for information to prioritise entities for future resolution planning' and to continue 'bespoke resolution planning with a small number of entities'.

6. Cyber-resilience

CPS 234 Information Security (CPS 234) compliance is flagged as a focus.

The letter notes that all remaining CPS 234 tripartite assessments are due to be submitted to APRA in the next six months. APRA cautions that

> 'Where entities are found to have significant vulnerabilities, APRA will take a proportionate response and may intensify supervision, require root cause analysis, request remediation plans, and consider enforcement action'.

Sector-specific priorities

Banking sector specific priorities

Interest rate risk in the banking book (IRRBB), regulatory capital, liquidity, implementation of proposed reforms to the payments licensing regime, cryptoassets and stress-testing are identified as key priorities over the next six months.

On crypto assets, APRA flags plans to consult on the prudential treatment of cryptoassets 'in 2024', with new requirements planned to apply from 2025. The new prudential requirements are planned to be based on the Basel Committee's finalised standard for the prudential treatment of banks' exposures to crypto-assets.

On stress-testing, APRA plans to conduct a banking stress test in mid-2024 with systemically important banks. The letter states that 'the scope of entities involved will be determined in early 2024 and entities will be notified'.

Insurance sector

The letter flags four insurance-sector specific areas of focus: 1) general insurance affordability and availability; 2) life insurance sustainability; 3) the availability of a range of retirement products for retirees and private health insurance; and 4) private health insurance capital reforms.

Superannuation sector

1) Investment governance; 2) 'superannuation transparency' (addressing underperformance); 3) uplifting practices to support better retirement incomes; and 4) financial resilience are flagged as key priorities in this context.

On financial resilience, APRA plans to consult on revisions to Prudential Standard SPS 114 Operational Risk Financial Requirement and associated guidance in 2024.

APRA stands ready to adjust these priorities 'as needed'

The letter makes clear that the priorities outlined above are intended to respond to the challenges in the current environment – eg the 'growing reliance on digital technologies by entities and the community', to integrate 'lessons' learned eg lessons from last year's global banking turmoil and to progress certain policy priorities.

APRA states that it will

> 'remain adaptable to changes in the external environment and will adjust these priorities as needed, to ensure the industries it regulates can continue to respond to new and emerging risks'.
>
> [Source: APRA letter to industry 31/01/2024]

Webinar | CPS 230 Operational Risk Management: Practical steps organisations and leaders can take

Following the release by the Australian Prudential Regulation Authority (APRA) of its long-awaited new cross industry prudential standard - CPS 230 Operational Risk Management (CPS 230) – in July 2023, APRA has made clear that it expects entities to be proactive in their preparations for implementing the new requirements ahead of the 1 July 2025 commencement date.

CPS 230 implementation is included among APRA's six cross-industry supervisory and policy priorities for the first half of 2024.

CPS 230 will require enterprise-wide changes for general, life and health insurers, superannuation trustees and banks - impacting legal, risk, compliance, and technology functions as well as boards and senior management.

For more on CPS 230 read: APRA's new operational risk standard finalised - POST - MinterEllison and CPS 230: The Practical Playbook - Insight - MinterEllison

To support entities in understanding and preparing for implementation of the new standard MinterEllison is holding a online webinar on **Thursday, 22 February 2024 at 1:00pm - 2:00pm** outlining how organisations and their leaders can best position themselves for CPS 230 across each of the key disciplines affected. Registration is free.

You can register your attendance using this link

Housekeeping: Treasury is consulting on proposed miscellaneous/technical amendments to Treasury Portfolio Laws

The government has released draft legislation – [Exposure Draft] Treasury Laws Amendment Bill 2024: Miscellaneous and technical amendments Autumn 2024 and Treasury Laws Amendment Instrument 2024: Miscellaneous and Technical Amendments Autumn 2024 – proposing to make various technical amendments to improve the quality of Treasury portfolio laws/ensure laws operate as intended, for a short consultation period.

The draft Explanatory Memorandum sums up the proposed changes as follows:

- 'repealing redundant and inoperative provisions
- enhancing readability and administrative efficiency
- reducing unnecessary red tape; and
- making other technical changes'.

The proposed changes are part of the government's 'ongoing commitment to the care and maintenance of Treasury portfolio legislation'.

Insolvency safe harbour

The Draft Bill proposes to implement four recommended changes to improve the drafting of the insolvency safe harbour (recommended by the 2021 independent review) – recommendations 3, 6, 8 and 9. The specifics of the proposed changes are discussed at para [1.12-1.15] of the draft Explanatory Memorandum.

Timing

The due date for submissions is 12 February 2024

[Source: Treasury Consultation: Miscellaneous Amendments to Treasury Portfolio Laws 2024 30 January 2024 - 12 February 2024]

Banking Code of Conduct | AFCA's submission to ASIC CP373 raises concerns that the ABA's proposed changes to the Banking Code water down existing Code commitments

ASIC's consultation on proposed revisions to the Banking Code

The Australian Banking Association (ABA) has submitted proposed revisions to the Banking Code of Practice (Banking Code) to the Australian Securities and Investments Commission (ASIC) for approval.

ASIC recently called for feedback on the ABA's proposed changes to inform its decision on whether to grant approval – the first time that ASIC has undertaken consultation ahead of making such a decision.

Among the issues on which ASIC requested feedback were stakeholder views on:

- whether the proposed Code imposes obligations on subscribers that are beyond those required by the law and, in doing so, addresses key potential consumer harms
- whether the proposed Code strikes an appropriate balance between simplifying the Code and minimising regulatory duplication on the one hand, and promoting consumer awareness of protections applicable to their banking relationship on the other.

You can find ASIC's summary of the proposed changes to the Code in Consultation Paper 373 at Table 1 (p12).

AFCA and consumer advocates have separately raised concerns

In its submission to the consultation, the Australian Financial Complaints Authority (AFCA) has raised concerns that the proposed changes would 'reduce consumer protection' afforded under the existing Code.

Broadly, AFCA submits that the proposed changes could:

– 'remove consumer contractual entitlements and express scope for AFCA to determine complaints relating to that subject matter,
– influence bank culture, if there is a perception that it is acceptable to step away from specific commitments and obligations to consumers, and/or
– limit the ability of the BCCC [Banking Code Compliance Committee] to explore systemic and thematic risks to identify and address issues early, uplift practice and minimise harm to consumers'

For context, proposed key changes to the Code include the removal of a number of existing provisions on the grounds that they are duplicative of other legislative or regulatory obligations. For example, the ABA proposes the removal of the commitment to exercise the care and skill of a diligent and prudent banker when considering providing a new loan or an increase in a loan limit to an individual customer that is not a business (paragraphs 49 and 50 of the current Code), on the grounds that it duplicates the responsible lending obligations in Ch 3 of the National Consumer Credit Protection Act 2009 (Cth) (NCCP Act).

In AFCA's view however:

> 'there [generally] needs to be a greater balance between the ABA's stated objectives of simplification and removal of duplication, and ensuring consumer protections are not reduced'.

For example, commenting specifically on the proposed removal diligent and prudent banker commitment from the Code AFCA submits that:

> 'the diligent and prudent commitment is, in language and in form, consistent with general community expectations about how banks will treat their customers. Removal of this longstanding obligation sends a potentially negative message to bankers about what is an acceptable level of professional conduct and changes the nature and tone of the Code. In our view it would be a significant backward step from the good work done by banks over recent years to rebuild trust and improve practice in dispute resolution'.

AFCA further submits that the existing diligent and prudent commitment should be retained because it 'creates a higher standard of conduct in assessing whether a loan is unsuitable' (than is required under the NCCP Act).

Similarly, a joint submission from consumer advocates - Consumer Action Law Centre, Financial Rights Legal Centre Financial Counselling Australia, Consumer Credit Legal Service, COTA Australia, South East Community Links, Indigenous Consumer Assistance Network, Westjustice, Mortgage Stress Victoria and Uniting Communities

Consumer Credit Law Centre SA – raises broadly similar concerns about the potential impacts of the removal of several existing Code provisions from a consumer protection standpoint.

It's submitted that the proposed:

- 'removal of the commitment in the current code to the clause 49 diligent and prudent banker obligation in regard to general consumer lending…will lead to a significant loss in practical oversight of a key area of banking (and in an area where breaches of the current Code are common)
- the removal of the clauses referring to the complaint and IDR processes. We are concerned that not all of these processes are contained in law or regulatory guidance, and their removal significantly reduces the value of the Code as a public facing document'.

Timing and next steps

The due date for submissions was 15 January 2024.

ASIC has said it intends to make a decision on whether to grant approval 'in the first half of 2024'.

> [Sources: ASIC media release 17/11/2023; ASIC Consultation paper: CP 373 Proposed changes to the Banking Code of Practice, AFCA submission: ASIC Consultation paper 373 – Banking Code of Practice; Consumer advocates' joint submission: ASIC Consultation Paper 373 – Banking Code of Practice]

Risk governance an area of continued focus for APRA: APRA imposes increased its capital requirements on insurer, mandates risk remediation program in response to governance concerns

Following a prudential review that identified 'significant weaknesses' in the risk governance, risk management and compliance practices of an insurer, the Australian Prudential Regulation Authority (APRA) has imposed on the insurer:

- increased capital requirements – an additional $50 million capital requirement in the form of an operational risk charge to take effect from 1 February 2024
- a requirement to undertake a risk mediation program.

Particular concerns highlighted in APRA's announcement include:

- 'capability and capacity weaknesses in the risk function'
- 'ineffectiveness of the "three lines of defence" model'
- 'unclear accountabilities and responsibilities across the business'
- 'weak risk reporting'
- 'an immature risk culture'.

APRA's announcement also makes clear that the insurer has accepted APRA's review findings and has committed to the risk remediation program.

Announcing this, APRA Member Suzanne Smith said that APRA's response underlines its continued focus on risk governance in the insurance sector.

> 'Insurance plays a critical role in the lives of Australians to minimise risks and provide financial stability. Last financial year, APRA-regulated general insurers paid almost $40 billion in claims to their policyholders so it is essential that consumers can have confidence that insurers are meeting their regulatory obligations, and in their ability to honour their commitments. APRA continues to engage with the industry on appropriate risk governance and will take suitable action if companies do not meet these expectations.'
>
> [Source: APRA media release 30/01/2024]

House inquiry into insurers' responses to 2022 major flood claims announces public hearings will commence from the end of January 2024

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 programs released

The inquiry has now published some details of upcoming public hearings. The table below provides a summary.

WHO IS APPEARING?	WHEN?
Consumer groups	
▪ Financial Rights Legal Centre, CHOICE and Consumer Action Law Centre (submission 27) ▪ Victorian Council of Social Service (submission 10) ▪ Disaster Legal Help Victoria (submission 7) ▪ Legal Aid New South Wales (submission 34) ▪ Legal Aid Queensland (submission 8)	31 January 2024
▪ Financial Counselling Australia (submission 6) ▪ Financial Counselling Victoria ▪ Restoration Industry Association of Australasia (RIA Inc. Australasia) (submission 21) ▪ Australian Consumers Insurance Lobby (submission 2) ▪ ARC Justice (submission 9)	1 February 2024
Regulators	
▪ Australian Securities and Investments Commission (submission 35) ▪ Australian Prudential Regulation Authority (n/a)	2 February 2024
Insurance Council of Australia, four insurers	
▪ Insurance Council Of Australia (submission 11) ▪ Suncorp Group (submission 12) ▪ Insurance Australia Group (submission 16) ▪ Youi (submission 14)	5 February 2024
▪ RACQ Group (submission 15) ▪ Allianz Australia (submission 13)	9 February 2024
Australian Financial Complaints Authority (and insurers cont..)	
The program for this hearing is yet to be published.	21 February 2024
General Insurance Code Governance Committee, Reinsurers	
The program for this hearing is yet to be published	23 February 2024

The committee is to report by **30 September 2024.**

Consumer advocates call on insurers not to delay action

In a joint statement, consumer advocates called on insurers not to defer action on addressing (what the group considers to be) known issues that have an outsize impact on policyholders. These include: better resourcing claims handling, improving communication with consumers and providing appropriate support to vulnerable consumers.

[Source: Inquiry into insurers' responses to 2022 major floods claims media release 30/01/2024]

Risk Management

Online scams | Government says 'scam crackdown' is showing early signs of success

Assistant Treasurer Stephen Jones has released a statement announcing that the government's 'scam crackdown' (see: First anti-scam centre 'hit squad' to target online investment scams - Post - MinterEllison and Combatting online scams: Government and the banking sector announce new measures - POST - MinterEllison) is showing early signs of success.

In support Mr Jones said that:

- scam losses are down since the establishment of the National Anti-Scam Centre (NASC) in July 2023 with the NASC's first quarterly report revealing a 16% drop in overall scam losses
- there has been a 60% drop in losses reported to Scamwatch during the 1-7 January 2024 period vs the same period in 2023. During the 1-7 January 2024 period there has been a 35% drop in losses to investment scams, a 38% drop in losses to employment scams and a 63% drop in online shopping scam losses.

Mr Jones also said that the 'disruption initiative' developed by a new 'Fusion Cell' (under the NASC) focused on disrupting investment scams is also having an impact in preventing losses before they occur. In illustration, Mr Jones said that as a result of the initiative one consumer was recently alerted to an imposter bond scam, prior to transferring funds ($300,000) to the scammer.

Mr Jones underlined the continued need for individuals to exercise ongoing vigilance/caution, commenting:

> 'While there are clear early signs of success, I urge Australians to remain vigilant to scams and keep up to date with new scam alerts from the NASC to protect themselves and their personal information."
>
> [Source: Assistant Treasurer and Minister for Financial Services Stephen Jones media release 19/01/2024]

Other News

Top Story | Exposure draft of the new Aged Care Act released

On 14 December 2023, the Department of Health and Aged Care (Department) released the Exposure Draft of the new Aged Care Act (New Act). Public submissions on the Exposure Draft are open until 16 February 2024.

You can read our overview of the key features of the draft Bill here: Exposure Draft of the new Aged Care Act released - Insight - MinterEllison

Top Story | FIRB outlook and foreign investment 2023 recap

MinterEllison has released a short update profiling key developments that foreign investors - particularly private equity funds and those investing in Australian residential land - should keep on their radar.

You can access the full text here: FIRB: 2024 outlook and foreign investment 2023 recap - Insight - MinterEllison

Has this newsletter been forwarded to you? You can subscribe to our weekly wrap up of key governance, risk, regulatory and ESG developments here.

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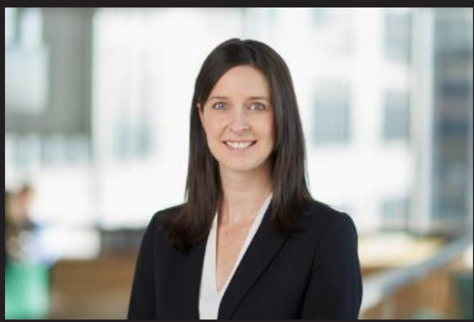

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