Governance News

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

6 March 2024

Contents

Shareholder Activism

Apple shareholders vote down all five shareholder ESG proposals at 28 February 2024 meeting, shareholder AI proposal secures 38% support

Five shareholder ESG proposals went to a vote at Apple Inc's 2024 annual meeting on 28 February 2024. The board recommended shareholders vote 'against' all five proposals and none secured the necessary support to be carried. Only two proposals secured over 5% support – proposal 6 calling for racial/gender pay gap disclosure secured (approx) 12% support and proposal 7 calling for disclosure around how the company uses AI/ethical guidelines in place secured (approx) 38% support.

Proposal 7 is one of a raft of AI-related proposals coming up for a vote this year (including a number filed at technology companies).

The table below provides a snapshot of each of the proposal and an indication of how (some) investors voted on each.

PROPOSAL	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
Discrimination against 'individuals with conservative viewpoints' Proposal 4 in the Notice (filed by the National Center for Public Policy Research) called on the company to publicly report: 'detailing the potential risks associated with omitting "viewpoint" and "ideology" from its written equal employment opportunity (EEO) policy' The supporting statement submits that 'Apple does not explicitly prohibit discrimination based on viewpoint or ideology in its written EEO policy…there is ample evidence that individuals with conservative viewpoints may face discrimination at Apple…Presently shareholders are unable to evaluate how Apple 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. Without an inclusive EEO policy, Apply may be scarifying competitive advantage.'	Approximately 1% support	▪ Norges Bank Investment Management (NBIM) voted against stating that it: '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) voted against ▪ California Public Employees Retirement System (CalPERS) voted against ▪ Legal and General Investment Management (LGIM) voted against. The rationale given is that: 'the company appears to be providing shareholders with sufficient disclosure around its diversity and inclusion efforts and nondiscrimination policies, and including viewpoint and ideology in EEO policies does not appear to be a standard industry practice'.
Respect for civil liberties: Proposal 5 in the Notice (filed by the American Family Association) calls on the Apple board to 'conduct an investigation and issue a report within the next 12 months…evaluating the standards and procedures Apple Inc. ("Apple"	Approximately 2% support	▪ 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

PROPOSAL	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
or "the Company") uses to curate app content on its various platforms, and procedures by which the Company manages disputes between government interests and user rights'.		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 because: 'Apple appears to have enhanced its disclosure around its management of government information requests and now provides sufficient information for shareholders to evaluate its performance'.
Racial/gender pay gap disclosure Proposal 6 in the Notice (filed by Arjuna Capital) calls on the company to 'report on median pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent'.	Approximately 12% support	▪ NBIM voted in support stating that: 'The board should account for material sustainability risks facing the company, and the broader environmental and social consequences of its operations and products. Sustainability disclosures should be aligned with applicable global reporting standards and frameworks to support investors in their analysis of risks and opportunities. Where a company's disclosure does not meet our needs as a financial investor, we will consider supporting a well-founded shareholder proposal calling for reasonable disclosure. We will not support a shareholder proposal that appears to impose a strategy or prescribe detailed methods, unrealistic timeframes or targets for implementation'. ▪ CalSTRS voted in support ▪ CalPERS voted in support ▪ LGIM voted in support because: 'LGIM expects companies to disclose meaningful information on its gender pay gap and the initiatives it is applying to close any stated gap'.
Report on use of AI Proposal 7 in the Notice (filed by AFL-CIO Equity Index Funds) calls on the company to report on its 'use of Artificial Intelligence ("AI") in its business operations and disclose any ethical guidelines that the company has adopted regarding the company's use of AI technology.'	Approximately 38% support	▪ NBIM voted in support stating giving the same reason as provided for Proposal 6. ▪ CalSTRS voted in support ▪ CalPERS voted in support ▪ LGIM voted in support because: 'we believe investors would benefit from further disclosure and transparency on the company's use of and internal governance over artificial intelligence'.
'Congruency report on privacy and human rights'	Approximately 2% support	▪ NBIM voted against giving the same reason as provided for Proposal 5.

PROPOSAL	VOTES IN SUPPORT	HOW SOME INVESTORS VOTED
Proposal 8 in the Notice (filed by the National Legal and Policy Center) calls on the Apple board to 'issue a report by March 31,2025, at reasonable cost and omitting proprietary or confidential information, analysing the congruency of the Company's privacy and human rights policy positions with its actions, especially in such places as war zones and under oppressive regimes, as they impact how the Company maintains its reputation, viability and profitability'.		▪ CalSTRS voted against ▪ CalPERS voted against ▪ LGIM voted against because: 'The company appears to provide shareholders with sufficient disclosure to assess its management of risks related to its operations in high-risk markets and to have policies and oversight mechanisms in place that seem to address human rights concerns raised by the proponent'.

[Sources: Notice of meeting; Results of meeting]

Investors not satisfied with Apple's workers' rights assessment

In 2022 investors – Trillium Asset Management, NYC Retirement Systems, Greater Manchester Pension Fund, Parnassus Investments, Service Employee International Union Master Trust Pension Plan and SOC Investment Group – filed a shareholder 'workers' rights assessment' proposal at Apple Inc calling on the board to:

> 'commission and oversee an independent, third-party assessment of Apple's adherence to its stated commitment to workers' freedom of association and collective bargaining rights as contained in the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work and the UN Guiding Principles on Business and Human Rights and explicitly referenced in Apple's Human Rights Policy'.

Investors withdrew the proposal, ahead of a vote, in exchange for Apple's agreement that it would conduct the requested third-party assessment and publish a report the end of 2023.

Apple duly published a report and investors have now released their assessment of it.

Investors consider their concerns have not been addressed

Investors have released a statement outlining their concerns about the quality of the assessment. Ultimately, due to (what they view to be 'flaws' in the way in which the assessment was carried out) they write that they are not:

> 'confident that the assessment adequately analyses whether Apple, in practice, adheres to its commitment to upholding workers' freedom of association and collective bargaining rights. Our initial concerns, which led us to initiate an engagement with the company and eventually file a shareholder proposal, are therefore left largely unaddressed'.

Specifically, investors consider that the assessment: a) 'lacked rigour' because it was largely a 'superficial "desktop" review of company policies/training programs rather than assessing what is happening in practice as well; b) did not include 'crucial worker input' (from workers who have sought to exercise their organising rights); and c) was carried out by an assessor without the necessary expertise (the assessor 'lacked relevant international labour rights expertise').

Investors conclude that:

> 'Apple still has more to do to demonstrate its stated commitment to workers' fundamental rights to freedom of association and collective bargaining'.

The statement expresses the hope that the company and the board will work to strengthen implementation of its Huma Rights Policy, but does not suggest that investors will file another shareholder proposal/escalate their concern through their voting decisions (eg by voting against individual directors).

[Source: NYC Comptroller brad Lander media release 28/02/2024]

SEC approves Bank of America's bid to block a shareholder climate proposal from proceeding to a vote

The US Securities and Exchanges Commission (SEC) has approved an application from the Bank of America to exclude a shareholder climate proposal (filed by As you Sow) from its 2024 proxy materials on the basis that the proposal seeks to 'micromanage the company'. Specifically, the Bank submitted that the proposal:

> 'impermissibly seeks to eliminate management's discretion by dictating specific methods for the Company's already extensive disclosures, calculations and methodologies concerning the progress and pathway the Company is on to achieving certain 2030 Scope 3 greenhouse gas ("GHG") emissions goals'.

For context, the proposal calls on the bank to:

> 'prepare and issue an assessment of the proportion of the bank's auto manufacturing, energy, and power sectors' emissions that are attributed to clients that the bank assesses are not aligned with a credible 1.5oC pathway by 2030, whether this proportion of unaligned clients will prevent BofA from meeting its 2030 net zero targets, and actions it proposes to address any such emissions reduction shortfalls'.

As You Sow has filed a similar proposal at Wells Fargo, which at this stage does not appear to have been challenged by the bank.

[Source: SEC no action response 29/02/2024]

Plastic pollution | Green Century secures agreement with hotel chain to assess its single-use plastic usage and set new plastic reduction goal

- Green Century has announced it has secured an agreement with hotel chain Choice Hotels International Inc to take action to reduce its single-use plastics.
- Under the agreement, Choice will:
  - conduct an assessment of its use of single-use plastic in 2024
  - use this to set a new single-use plastic reduction goal in 2025
- Announcing this, Green Century's Douglass Guernsey, described the agreement as a 'first step' towards addressing plastic pollution. 'The next step is to implement reductions, which will return long term

value to consumers, the business, and investors' Mr Guernsey said.

Broader campaign

Green Century has filed a number of other shareholder plastics proposals this year including at:

- three hotel operators - Hilton, Marriott, and Choice Hotels (now withdrawn) – asking them to measure, disclose and reduce their plastics use.
- three toy companies – Disney (this appears to have been withdrawn in exchange for agreement with the company), Hasbro and Mattel – urging them to reduce use of single-use plastic packaging and disclose their plastic footprint.

[Source: Green Century media release 28/02/2024]

Plastic pollution | As You Sow has withdrawn a shareholder EPR proposal at Hormel in exchange for new commitments from the company

As You Sow has filed nine 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 filed at Tyson Foods - an extended producer responsibility proposal - calling for the company to 'issue a report…describing opportunities for Tyson to support a circular economy for packaging' secured 4.1% support at the 2024 shareholder meeting.
- A similar proposal filed at Hormel Foods has been withdrawn in exchange for concessions from the company. As You Sow writes that Hormel has agreed to:

'cut packaging use by 10 million pounds by 2030, form a new industry working group to advance circular packaging policy and produce a report detailing opportunities for the company to take additional circularity action by later this year'.

[Source: As You Sow Consumer Packaging shareholder proposals 2024 [accessed 29/01/2024]; As You Sow media release 28/02/2024]

Vote no: ACCR calls on shareholders to vote against Chair of second energy company on climate grounds

- Ahead of the Santos 11 April 2024 AGM, the Australasian Centre for Corporate Responsibility (ACCR) announced it had filed a members' statement with the company urging Santos shareholders to vote against the reelection of the board Chair, on climate-related grounds.
- Broadly, the ACCR asserts that the Chair bears responsibility for the companies' strategic direction, including the companies' transition strategy. In consequence, the ACCR considers that a vote against the Chair in this instance is appropriate given (what the ACCR describes as) the companies' 'poor performance and strategic failings'. The ACCR writes:

'Under the direction of chair…the Santos board has failed to deliver a company strategy that maximises shareholder value. The Santos board has made a series of strategic decisions aimed at growth which have resulted in chronic share price underperformance. With shareholder frustration mounting, the primary strategy the board appears to be contemplating is to merge with or sell off assets to an industry peer. The board's options are decreasing, with the highly publicised merger talks with Woodside recently concluding without a deal. Santos operates in a "sunset industry" facing long-term structural demand decline and a challenging future operating environment. The company needs a high-calibre chair, with the requisite skill and judgement to properly weigh its strategic options in the face of the energy transition and to deliver satisfactory shareholder returns. As Chair since February 2018, Spence is ultimately responsible for the company's poor performance and strategic failings. A vote against him is warranted'.

The ACCR has also filed a members' statement with Woodside Energy Group ahead of the 24 April 2024 AGM, again urging shareholder to vote against the reelection of the Chair to telegraph concern about the company's climate direction/strategy, (alleged) lack of responsiveness to shareholders and to hold the Chair to account for these issues.

[Source: ACCR media release 15/02/2024; 29/02/2024]

Disclosure and Reporting

Greenwashing still in focus I ASIC issues (another) greenwashing infringement notice

- The Australian Securities and Investments Commission (ASIC) continues to take action against (alleged) greenwashing, with the issue of another infringement notice (and $13,320 fine) this week – the seventeenth issued to date for (alleged) ESG misconduct.
- This latest infringement notice was issued to the trustee and responsible entity of the Bloom Climate Impact Fund (Bloom Fund) over (allegedly) misleading statements about the application of fossil fuel exclusions in the Product Disclosure Statement (PDS) for the Bloom Fund.
- Broadly ASIC alleges that:
  - the PDS indicated that the Bloom Fund would 'seek to avoid the investment of the Fund's assets in a range of excluded activities, including in fossil fuels'.
  - this statement was misleading because it is inconsistent with the 33% screening threshold that allowed investment in companies that derived up to 33% of their revenue from excluded activities, including fossil fuels (which was not disclosed in PDS)
  - as a result of the application of the 33% threshold, the Bloom Fund acquired and held a direct investment in General Electric Co (which derived 16% of its revenue from fossil fuels) in the 2022 financial year.
- ASIC submits that:

  'applying a negative screening process which allows a company to derive up to 33% of its revenue from an excluded activity is not seeking to avoid investments in those activities'.
- The specific reasons for ASIC's concerns are set out in the infringement notices which have been published on the Infringement notices register here

  [Source: ASIC media release 29/02/2024]

Greenwashing | New York State Attorney General sues meat producer over (allegedly) misleading environmental claims

New York Attorney General Letitia James is suing the world's largest beef producer over (alleged) greenwashing.

Broadly, the Attorney General alleges that certain environmental/sustainability claims made by the meat producer, including (but not limited to) net zero claims constitute 'deceptive business practices and false advertising' because they are:

- baseless – the Attorney General alleges that the claims are:
  - not based on any assessment by the company of its emissions footprint; and
  - inconsistent with the company's documented plans to increase beef production (which is by its nature, carbon intensive)
- made with the object of 'capitalising' on increasing consumer demand for environmentally friendly products and gaining a competitive edge in doing so

The legal action was launched after a warning from the Better Business Bureau's National Advertising Division which recommended that the company cease making the claims, did not stop the company from continuing to do so.

The Attorney General has not specified the number of (alleged) legal 'violations' – rather it's envisaged that this will be determined at trial.

The Attorney General is seeking that the court require the organisation to:

- cease its "Net Zero by 2040" advertising campaign
- conduct a third-party audit of its compliance with New York's consumer protection statutes
- pay 'disgorgement of all ill-gotten gains earned by misleading the public about their business practices'
- pay penalties of 'at least $5,000 per 'violation'.

[Source: New York State Attorney General Letitia James media release 28/02/2024]

Singapore to introduce mandatory ISSB-aligned climate disclosure requirements from FY2025

The Accounting and Corporate Regulatory Authority (ACRA) and Singapore Exchange Regulation (SGX RegCo) have provided the following timeline for the planned phased introduction of mandatory, ISSB-aligned climate disclosure requirements for listed issuers and large non-listed companies.

TIMELINE FOR REQUIREMENTS	LISTED ISSUERS	LARGE NON-LISTED COMPANIES (ANNUAL REVENUE ⩾ $1B AND TOTAL ASSETS ⩾ $0.5B)
Mandatory climate-related disclosures including Scope 1 and 2 greenhouse gas (GHG) emissions	FY 2025	FY 2027
Scope 3 GHG emissions	FY 2026	'No earlier than FY 2029'
External limited assurance on Scope 1 and 2 emissions	FY 2027	FY 2029

Transitional Relief

Relief from the new requirements may be granted to large non-listed companies with parent companies that are already reporting under other international (but 'ISSB-aligned local reporting standards or equivalent standards eg European Sustainability Reporting Standards).

This relief would be for a 'transitional period of three years from FY 2027 to FY 2029' – with ACRA to assess whether the period should be extended 'depending on global developments relating to the adoption and recognition of other standards and frameworks'.

SGX RegCo will separately conduct a public consultation on the detailed rule amendments to implement the recommendation relating to listed issuers, including requiring CRD based on the ISSB Standards from FY2025.

[Source: ACRA media release 28/02/2024; SGX RegCo media release 28/02/2024]

Reserve Bank of India consults on draft climate disclosure framework for regulated entities

The Reserve Bank of India (RBI) is consulting on a proposed framework for climate disclosure for regulated entities. The due date for submissions is 30 April 2024.

Key Points

Which entities are proposed to be in scope?

The proposed framework would apply to 'regulated entities' ie:

- 'All Scheduled Commercial Banks (excluding Local Area Banks, Payments Banks and Regional Rural Banks)
- All Tier-IV Primary (Urban) Co-operative Banks (UCBs)
- All All-India Financial Institutions (viz. EXIM Bank, NABARD, NaBFID, NHB and SIDBI)'

It's proposed that foreign banks would be required to make disclosures 'specific to their operations in India'.

Adoption of the framework/guidelines is proposed to be voluntary for 'top and upper layer Non-Banking Financial Companies (NBFCs)'.

What information would in-scope entities need to report and when?

Broadly, in-scope entities would need to report to the RBI under the following four 'thematic pillars'. Annex 1 to the draft framework (at p6) is a table providing a detailed summary of the proposed 'baseline' (minimum) and 'enhanced disclosure' requirements under each of the pillars.

The table below provides a very broad snapshot.

FOUR THEMATIC PILLARS	INFORMATION PROPOSED TO BE IN SCOPE
Governance	▪ Entities would need to outline 'the governance processes, controls and procedures' they have in place to 'assess, manage, mitigate, monitor and oversee climate-related financial risks and opportunities'. This is proposed to include both: – The boards' oversight of climate-related risks/opportunities including for example: details of the governance structure (which could be Board, Committee or equivalent body(ies) or individual positions) responsible for the oversight of climate-related issues; and 'whether appropriate competencies and skills are available or will be developed by the body(ies) or individual positions to oversee the strategies for responding to climate-related issues'. – Senior Management's role in assessing and managing climate-related risks and opportunities.
Strategy	Entities would need to outline their strategy for managing climate risks/opportunities. This is proposed to include disclosure of: – 'Climate-related issues that could reasonably be expected to affect the RE's prospects (in terms of strategy, business model, decision-making, revenue, costs, assets, etc. – Description of what they consider is 'short term', 'medium term' and 'long term' horizon and how are these definitions linked to the planning horizon for strategic decision-making – Description of specific climate related issues that would arise over various time horizons (short/ medium/ long term) and the material impact it could have on the RE – Description of the current and anticipated effects of climate-related financial risks and opportunities on the business model of the RE'
Risk Management	Entities would need to disclose the processes they have in place to 'identify, assess, prioritise and monitor climate-related financial risks and opportunities, including whether and how those processes are integrated into and inform the RE's overall risk management process'. It's proposed that this would include disclosure of: ▪ 'the processes and related policies to identify, assess, prioritise and monitor climate-related financial risks; ▪ the processes used for managing climate-related risks; ▪ the extent to which, and how, the processes for identifying, assessing, prioritising and monitoring climate-related financial risks and opportunities are integrated into and inform the overall risk management'.

FOUR THEMATIC PILLARS	INFORMATION PROPOSED TO BE IN SCOPE
Metrics and Targets	Entities would also need disclose ▪ the metrics used to assess the climate-related financial risks and opportunities facing the entity (in line with the entity's) strategy and risk management process (and any external assurance taken) ▪ 'Scope 1, Scope 2 and Scope 3 greenhouse gas (GHG) emissions and the related risks'

Proposed timing

IN-SCOPE ENTITY	GOVERNANCE, STRATEGY, AND RISK MANAGEMENT	METRICS AND TARGETS
SCBs, AIFIs, Top and Upper layer NBFCs	FY 2025-26 onwards	FY 2027-28 onwards
Tier IV UCBs	FY 2026-27 onwards	FY 2028-29 onwards

Proposed timing is planned to be announced 'in due course' for other responsible entities.

[Source: Reserve Bank of India media release 28/02/2024; Draft climate disclosure framework]

In Brief | SEC is due to vote on the long-awaited Climate Disclosure Rule today

[Source: SEC Meeting Agenda 06/03/2024]

In Brief | Mandatory Climate reporting in Australia: AFSI' submission on the AASB's draft disclosure standards supports AASB sticking as closely as possible to the ISSB standards to maximise alignment and minimise unnecessary complexity

[Note: The Australian government plans to phase in new, internationally aligned, mandatory climate disclosure reporting requirements from July 2024 for certain entities. For more on the government's proposed approach see: Introduction of mandatory climate reporting in Australia: Second round of consultation launched

The content of these new requirements will be set out in new Australian Sustainability Reporting Standards (ASRS) which are being developed by the Australian Accounting Standards Board (AASB).

The AASB has released a package of three initial draft standards for consultation based on the ISSB standards: IFRS S1 and IFRS S2. The due date for submissions was 1 March 2024. For more on AASB's draft standards see: Another step closer towards implementing mandatory climate disclosure in Australia - Post - MinterEllison]

[Source: AFSI submission to AASB Consultation on Exposure Draft ED SR1 Australian Sustainability Reporting Standards – 1 March 2024]

In Brief | The government has announced a $2 billion investment facility to 'provide loans, guarantees, equity and insurance for projects that would boost Australian trade and investment in Southeast Asia, particularly in support of the region's clean energy transition and infrastructure development'

[Source: Prime Minister Anthony Albanese media release 05/03/2024]

Markets and Exchanges

Consultation launched on proposed changes to the ASX Corporate Governance Principles and Recommendations

The ASX Corporate Governance Council is consulting on proposed changes to the ASX Corporate Governance Principles and Recommendations.

Key changes

The table below provides a brief snapshot of some of the proposed changes. The background paper and consultation questions and markup of the proposed changes to the current edition of the ASX Corporate Governance Principles and Recommendations provide more detail.

PROPOSED CHANGE	DETAILS
Reducing regulatory overlap/duplication	In the interests of reducing duplication between other legal/regulatory obligations and the Principles and Recommendations, it's proposed that the following recommendations in the current (4th) edition be **deleted**: ▪ Recommendation 3.3 (**disclosure of whistleblower policy**) ▪ Recommendation 3.4 (disclosure of anti-bribery and corruption policy) ▪ Recommendation 4.2 (CEO and CFO declaration for financial statements) ▪ Recommendation 6.4 (substantive security holder resolutions on a poll) ▪ Recommendation 6.5 (offering electronic communications to security holders) ▪ Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives) ▪ Recommendation 8.3 (policy on hedging of equity-based remuneration)? The Council seeks feedback in particular on the proposed deletion of Recommendation 3.3 noting that the current expectation is that companies make their whistleblower policy publicly available on their website (and therefore generally accessible) and also that whistleblower policies have been a focus for ASIC.
Additional information about board skills/competencies	It's proposed that entities should be expected to disclose (under recommendation 2.2) both: ▪ a board skill matrix setting out both the mix of skills that the board currently has, and is looking to achieve, in its membership; and ▪ the processes in place for assessing that the relevant skills and experience are held by its directors. The rationale given for disclosure of this information is that: 'Council member research supports the importance to investors of understanding how a listed entity assesses that its directors hold particular skills, and how those skills are defined'.
Board diversity	It's proposed that: ▪ Recommendation 2.3 be amended to set the expectation that S&P/ASX300 entities set a goal for achieving gender balance on their board (ie at least 40% women, 40% men and the remaining 20% open)within a period to be specified by the entity (up from the existing 30% goal). ▪ It's also proposed that entities disclose 'any other relevant diversity characteristics' (in addition to gender) which are being considered for the board's membership The Council write that the proposed changes aim to:

PROPOSED CHANGE	DETAILS
	'balance disclosure which may assist security holders' understanding of how a board is seeking to develop its range of perspectives, the promotion of board succession planning, and flexibility for board recruitment processes'.
Effectiveness of DEI policies	It's also proposed that entities be expected (Recommendation 3.4(c)) to disclose the effectiveness of their diversity and inclusion practices (rather than just disclosure of their policy and certain gender metrics).
Director independence	It's proposed that the security holding reference included in Box 2.4 (factors relevant to assessing the independence of a director) be increased from a substantial holder (5% or more) to a 10% holder (10% or more). The Council states that this proposed change: 'reflects that Australian law has other significant regulation relating to conflicts of interest, including material personal interests of directors and related party transaction provisions'.
Corporate conduct/culture	It's proposed that Recommendation 3.2 (c) set the expectation that entities disclose (on a de-identified basis) the outcomes of actions taken by the entity in response to 'material' breaches of its board/board committee Code of Conduct (while recognising that entities may exclude disclosure of outcomes to the extent that actions are not finalised or cannot be appropriately de-identified).
Recognising key stakeholders	▪ New Recommendation 3.3 recommends that a listed entity should 'have regard to the interests of the entity's key stakeholders, including having processes for the entity to engage with them and to report material issues to the board'. ▪ It's also proposed that Principle 3 (acting lawfully, ethically and responsibly) be amended to reference external stakeholders.
Risk Management	▪ It's proposed that Recommendation 7.4 be amended 'to focus on an entity's material risks' and remove references to specific risks eg material environmental and social risks. ▪ The Council writes that the proposed changes aims to improve the quality of entities reporting/management of risk. Among other things, it's suggested that the focus on 'material risks' may help shift entities away from 'generic ESG disclosures, generic risk disclosure and distinctions between financial and non-financial risk'.
Remuneration	▪ It's proposed that Recommendation 8.2 (separate disclosure of remuneration policies for non-executive directors, other directors and senior executives) and Recommendation 8.3 (hedging of equity-based remuneration) be deleted 'on the basis of significant regulation of remuneration and remuneration reporting under Australian law'. ▪ It's proposed that two new Recommendations be added: – Recommendation 8.2 sets the expectation that non-executive directors should not receive performance-based remuneration or retirement benefits – Recommendation 8.3(b) sets the expectation that entities disclose if clawback/similar provisions are applied during the reporting period (on a deidentified basis)

Timing and outlook

From a timing perspective, the due date for submissions is 6 May 2024.

It's envisaged that the updated Principles and Recommendations (once finalised) will be issued in early 2025 and would apply for financial years commencing on or after 1 July 2025. For clarity, this would mean that:

- entities with a 30 June balance date could be expected to measure their governance practices against the 5thEdition's Recommendations commencing with the financial year ended 30 June 2026; and

- entities with a 31 December balance date could be expected to measure their governance practices against the 5th Edition's Recommendations commencing with the financial year ended 31 December 2026

The council seeks feedback on this proposed timing.

[Sources: ASX Consultation: Corporate Governance Principles and Recommendations 5th edition]

ESG

Top Story | New report offers insights into how Australian boards are thinking about and acting on climate

Where does climate risk sit in Australian directors' list of priorities? How are boards responding to the challenge? What do directors consider are the main barriers to action? These are some of the questions addressed in a new report from the AICD and Pollination for the Climate Governance Initiative Australia. Here are our key takeaways.

Key Takeouts

- Climate risk remains a top priority for most boards, with most directors viewing it as a material risk to their organisations (and many also seeing the opportunity). Urgency is highest among directors in the 35–44 age group, while confidence in existing approaches is lowest amongst this cohort.
- Directors view lack of policy certainty in Australia as the key barrier to action. The report underlines the necessity for alignment between directors, policymakers and investors to support (and to accelerate) progress.
- Nature/biodiversity loss is emerging as a priority for Australian boards – directors expect climate reporting to extend to include nature-related risk/opportunity. Interestingly, female directors are significantly more likely to believe nature and biodiversity loss present a material financial risk to their organisation than male counterparts (60 per cent versus 34 per cent).

The Australian Institute of Directors, together with Pollination, have released a new report tracking the evolution of directors' perceptions of climate risk and trends in climate governance practices since 2021.

Our key takeaways are below.

There is a high level of concern about climate risk

The report highlights that despite the many competing challenges facing boards – eg inflation, economic and geopolitical uncertainty – the vast majority of Australian directors view climate risk as a strategic priority for their organisations. For example:

- 80% of directors surveyed are concerned about the impact of climate change as a material risk to their organisation.
- 60% of directors surveyed would like to see their board pay more attention to the issue

Directors are increasingly seeing the opportunity (as well as the risk)

Notably, the report highlights that directors across all sectors are also alive to the potential opportunities:

- 80% of directors that see climate change as a material risk.
- Of those, most (70%) see opportunity from transition. Directors of listed and unlisted companies (60% and 59% respectively) are the most likely to see opportunity as well as risk, while government (52%) and NFP (40%) directors are less likely to do so.
- The most often cited opportunities identified were brand recognition/reputation (33%) and separately, new products and/or services (also 33%).

Nature-related risk is emerging as a priority (but boards consider they lack the bandwidth to give it the focus required)

- The report found that half (50%) of the directors surveyed view nature-related risks/biodiversity loss as a material risk to their organisation.
- The level of concern was significantly higher among government sector/public service directors (70%) vs directors of listed companies (48%) and directors of unlisted companies (45%).

- Perhaps unsurprisingly, directors from industries with extensive environmental management requirements (eg mining companies) were 'more advanced in their thinking' around nature reporting/impact than directors in other industries.
- Directors consider that implementation/adoption of the Taskforce for Nature-related Financial Disclosures (TFND) framework will be challenging even for organisations with advanced environmental management experience because of the level of detail required.
- In terms of preparedness, at this stage, most organisations have not yet considered the integration of nature-related risks/opportunities with climate within their business and many directors consider that their boards are not yet prepared for nature reporting. According to the report, this is not due to lack of awareness of the issue, but to a lack of 'bandwidth' – most organisations are still primarily focused on climate.
- The report highlights that despite the challenges involved in implementation, directors expect reporting expectations to extend from climate to nature and biodiversity (especially in light of the finalisation of the TNFD framework) sooner rather than later. On this, the report quotes Geoff Summerhayes as commenting:

  'Nature will follow the climate playbook, but on fast forward'.

High levels of concern/awareness of climate-related risk is not necessarily translating into increased climate action

The report suggests that since 2021, organisations seem to have narrowed their focus when it comes to climate action with an increase in activity in certain areas, and a drop off/no increase others. For example, the report found that boards seem to be focused on upskilling and information flows:

- receiving reports on climate and sustainability records (36% up 3% on 2021)
- undertaking director training (26%, up 8%)
- conducting assessments of board climate competence (16% up from 4%)

In contrast there is less activity in other areas. For example:

- just 34% of directors reported that climate change is embedded into their organisation's risk management framework (down 11% on 2021)
- only 20% of boards have climate-risk metrics in place (down from 26% in 2021).

Drilling down, the report also highlights a divide between the level of activity in listed companies vs other entities. For example, the report highlights that:

- while, as flagged, just 34% of directors overall reported that climate change is embedded into their risk management frameworks, 50% of directors of listed companies reported that this was the case
- when it comes to climate transition plans and targets, listed companies are more likely than unlisted companies to have transition plans and climate targets in place – 43% of listed companies vs 25% of unlisted companies.

The report highlights that a number of directors in larger organisations indicated that they are focused on implementation/execution of climate plans and embedding climate commitments across their business – they are 'grappling' with the scale/complexity of operationalising their existing commitments rather than engaged on making new ones.

Key barriers to action

- Perceived lack of 'settled climate change policy' was identified by 42% of directors surveyed as the greatest barrier to action on the issue – making this the top barrier identified. Directors highlighted 'discordant or misaligned policies with contradictory incentives, along with shifting goalposts, as factors imposing an unreasonable burden on companies'. The report underlines the necessity for alignment between policymakers, investors and companies in order to enable (and accelerate) progress in line with Australia's climate goals.
- 24% of directors overall (and 35% of listed directors) also nominated pressure to meet the short-term financial demands of some investors as a key challenge (for example, where funding climate initiatives impacts short term returns). For listed directors, 35%
- Resourcing/time constraints emerged as a particular issue for not-for-profit directors and to a lesser extent for government directors with 31% of NFP directors and 25% of government directors nominating this as a barrier to action

Regulation is perceived as both a 'driver and a drag' on action

- The expected introduction of mandatory climate reporting requirements is identified as a 'driving focus' for directors with most (72%) reporting that they are well or somewhat prepared for the new requirements.
- However, the report also highlights that increased regulatory pressure and concern over being accused of greenwashing combined with a lack of assurance capability is also leading to companies to exercise caution when it comes to setting ambitious climate goals.

Emerging 'better' climate governance practices

The report found that board approaches to climate continue to evolve with better practices emerging. A separate document - Australian Market Snapshot - outlines emerging better governance practices around strategy, execution, stakeholders, regulation and governance together with recommendations/guidance for directors.

[Sources: AICD media release 05/03/2024; Full text report: Climate Governance Study 2024: Moving from vision to action]

Why large-scale investment in renewable energy infrastructure is the 'safest bet to ensure a steady, secure power supply without shortages or price spikes': New report from the Centre for Policy Development released

The Centre for Policy Development has released a paper challenging the idea that large-scale investment in renewable energy will necessarily add to inflationary pressures on Australia's economy.

Very briefly, the CPD submits that:

- Replacing Australia's aging energy infrastructure is not a choice but a necessity – the investment in replacement infrastructure, whether renewable or 'like for like' will require very considerable investment.
- The difference in investment required to replace fossil fuel infrastructure with renewable alternatives is relatively small – it's estimated that replacing existing infrastructure with fossil fuel powered generation would cost $400 billion vs $625 billion if the existing infrastructure were replaced with 'green' alternatives.
- Opting for 'green technology' would have a range of benefits including (among other benefits) protecting against price volatility – once renewable energy generation is built, 'there is no ongoing need to buy fuel at prices set by global commodity markets' and create new export industries (which will be increasingly important for Australia's economy as global demand for fossil fuels decreases)

Ultimately, the CPD concludes that

> 'the safest bet to ensure a steady, secure power supply without shortages or price spikes is to commit to transition investments'.

Co-author of the paper (former RBA Deputy Governor) Guy Debelle sums up the CPD's position as follows:

> 'Fears of potential inflationary pressure from a green energy transition are unfounded. There may be challenges from building out hundreds of billions of dollars of energy infrastructure – but Australia needs this investment regardless of whether it is green or not. The difference in cost between a fast green transition and any alternative scenario is small, and unlikely to be macroeconomically significant. This isn't the first time Australia has faced a massive build-out of new infrastructure, and we can apply the lessons from previous investment cycles to this one. Not only will it set us up as a global leader in green technology, it will safeguard Australia's energy future and, most importantly, reduce emissions and mitigate climate change.'
>
> [Sources: CPD media release 01/03/2024; Full text report: Capital for Kilowatts]

CA 100+ confirms and responds to recent exits

Climate Action 100+ has released a statement confirming both: a) the withdrawal of JP Morgan Asset Management, State Street Global Advisors, and PIMCO from the initiative; and b) BlackRock's decision to transfer its participation in the initiative to BlackRock International.

The statement underlines that this will not impact the initiative's current direction – the strengthened approach or 'Phase two' announced last year ie there are no plans to back away from pushing companies to implement transition plans (rather than simply calling for disclosure).

The statement also underlines that the initiative 'continues to have the backing and support from hundreds of investors globally, including asset owners, as shown by the 60 new signatories joining since the launch of phase two alone'.

Climate Action 100+ writes:

> 'While we are disappointed to see them go, hundreds of investor signatories remain committed to ensuring 170 of the largest greenhouse gas emitters reduce emissions, improve governance, and strengthen climate-related financial disclosures'.
>
> [Source: Climate Action 100+ media release 26/02/2024]

Regulators

Top Story | Consumer protection a key focus | ASIC's latest enforcement update highlights the impact of the regulators' scam takedown capability

Our key takeaways from ASIC's latest enforcement report - REP 780 ASIC enforcement and regulatory update: October to December 2023 – and summary of enforcement outcomes for H2 2023

Key Takeouts

- Consumer protection has been a key focus for the regulator over the last six months: In the second half of 2023, 3490 investment scam and phishing websites targeting consumers have been removed, with a further 350 'in the process of being taken down'.
- Looking ahead, ASIC Chair Joe Longo underlined ASIC's continuing focus on consumer protection (including tackling scams). More broadly, Mr Longo has flagged the following as focus areas:

  > 'scrutinising the way lenders comply with their hardship obligations, how banks support First Nations consumers to access low-fee accounts, and how superannuation trustees deliver important member services, such as how they handle death benefits claims'.

Overview

The Australian Securities and Investments Commission (ASIC) has released its latest enforcement activity Report - REP 780 ASIC enforcement and regulatory update: October to December 2023 (REP 780) - outlining its key enforcement actions during Q4 2023 together with a summary of enforcement outcomes for H2 2023 and an updated (indicative) regulatory developments timetable.

Disrupting scams is a key focus

Announcing the release of the report, ASIC underlined the impact that its new 'scam website takedown capability' has had since its launch in July 2023.

According to ASIC, in the second half of 2023, 3490 investment scam and phishing websites targeting consumers have been removed, with a further 350 'in the process of being taken down'.

ASIC Chair Joe Longo said that this work is particularly important in the current environment:

> 'Cost of living issues mean more Australians are looking for ways to make ends meet and scammers are only too happy to try and take advantage. That's why ASIC is stopping investment scams at the source of their promotion, removing them from the internet before they can lure in unsuspecting consumers'.

Mr Longo also flagged that going forward, ASIC plans to extend its focus on how major banks detect, prevent and respond to scams to a broader range of banks and superannuation trustees.

More broadly, Mr Longo said that ASIC is:

> 'scrutinising the way lenders comply with their hardship obligations, how banks support First Nations consumers to access low-fee accounts, and how superannuation trustees deliver important member services, such as how they handle death benefits claims'.

Enforcement outcomes: H2 2023

ASIC is 'in courts and boardrooms across Australia almost every single day of the week'

Mr Longo also underlined ASIC's continuing commitment to enforcement, including taking court action, to address misconduct, observing:

> 'In the half year to 31 December 2023, ASIC secured almost $60 million in civil penalties and 9 criminal convictions. We launched 83 new investigations, commenced 19 new civil proceedings, criminally charged 19 individuals and completed nearly 350 surveillances. ASIC is in courts and boardrooms across Australia almost every single day of the week'.

Below, we've highlighted some of the key points in ASIC's enforcement summary for the period July to December 2023.

The overall number of enforcement outcomes - court based and administrative - recorded for H2 2023 is somewhat down on H1 2023 across all areas (financial services, markets, corporate governance, small business).

Financial Services

In H2 2023, ASIC recorded 51 financial services-related enforcement results, the majority (34) of which were administrative enforcement outcomes.

Overall, of the 51 financial services-related enforcement results reported by ASIC for H2 2023, almost half (26) concerned financial advice misconduct.

Looking more closely:

- ASIC reports that there were 34 administrative enforcement outcomes recorded across a wide range of areas including: financial advice misconduct (22); investment management misconduct (6); credit misconduct (3); insurance misconduct (2); and 'other credit misconduct' (1). There were no administrative actions recorded for superannuation misconduct.

- There were 14 civil enforcement outcomes recorded across a similarly wide range of areas including: insurance misconduct (6), credit misconduct (4), financial advice misconduct (2); investment management misconduct (1); and superannuation misconduct (1) There were no civil enforcement outcomes recorded for 'other financial services misconduct'
- There were three criminal enforcement outcomes recorded in the areas of: financial advice misconduct (2); and credit misconduct (1).
- As at 8 January 2024, ASIC reports that 33 criminal and 45 civil actions across a wide range of areas were still before the courts, with the majority relating to credit or investment management misconduct.

For context, this is down on H1 2023 when the regulator reported 74 enforcement outcomes.

Markets

In H2 2023, ASIC recorded nine market-related enforcement results:

- The were eight administrative enforcement actions recorded in the areas of: 'other market misconduct' (6) and market manipulation (2)
- There was one civil enforcement action recorded in the area of continuous disclosure.
- There were zero criminal enforcement actions recorded.

As at 8 January 2024, ASIC reports that there are 13 criminal and 11 civil actions still before the courts. Eight – 7 criminal and one civil action) concern insider trading, and a further eight (four civil and four criminal) concern 'other market misconduct'.

The number of outcomes recorded for H2 2023 is down on the 16 outcomes recorded for H1 2023.

Corporate Governance

- In H2 2023, ASIC recorded 27 corporate governance related enforcement results – 26 administrative and one criminal enforcement action (concerning directors duties and governance failures). There were no civil actions recorded.
- The vast majority of 27 enforcement actions for the period concern auditor misconduct (23 administrative actions)
- As at 8 January 2024, a further 37 criminal and seven civil actions (most (31) of which concern directors' duties and governance failures) were still before the courts.

For context the number of outcomes recorded is down on the 457 outcomes recorded for H1 2023 (though 444 of these actions concerned 'auditor misconduct' specifically, SMSF auditors failing to lodge annual statements – the issue was identified as part of a 2022-23 compliance program).

Small Business

- In H2 2023, ASIC recorded 125 small business–related results: 112 criminal actions and 13 administrative actions.
- As at 8 January 2024, 97 further business-related criminal matters were still before the courts.

The number of outcomes recorded in down on the 151 recorded for H1 2023.

Indicative regulatory developments timetable released

ASIC has also released an (indicative) 'regulatory developments timetable' setting out the regulator's planned timeframes for regulatory initiatives across all sectors and an indication of ASIC's priorities.

Among other things, the timetable flags that this month (by the end of Q1 2024) ASIC intends to:

- Jointly publish with APRA the final Regulator rules and Transitional rules for the Financial Accountability Regime (FAR) for ADIs
- Jointly publish an all-industry information paper with APRA to provide guidance on the FAR
- Jointly consult with APRA on the Regulator rules for the FAR for the insurance and superannuation industries

[Sources: ASIC Media release 04/03/2024; ASIC Report 780 ASIC enforcement and regulatory update: October to December 2023 (REP 780); Summary of enforcement outcomes; Regulatory Developments Timetable]

Financial Services

FAR implementation | ASIC expects to jointly publish with APRA FAR Regulator and Transitional Rules by the end of March 2024

The Australian Securities and Investments Commission (ASIC) has released an updated regulatory developments timetable flagging when the regulator intends to publish draft or final guidance or make legislative instruments.

Among other things, this indicates that by the end of March 2024 ASIC intends to:

- Jointly publish with APRA the final Regulator rules and Transitional rules for the Financial Accountability Regime (FAR) for ADIs (for context, the Regulator Rules will 'prescribe information for inclusion in the register of accountable persons under the FAR' while the Transitional rules will 'prescribe information to be provided by ADIs to the Regulators when transitioning from the Banking Executive Accountability Regime (BEAR) to the FAR'.
- Jointly publish an all-industry information paper with APRA to provide guidance on the FAR
- Jointly consult with APRA on the Regulator rules for the FAR for the insurance and superannuation industries

[Source: ASIC Regulatory Developments Timetable 04/03/2024]

Independent review of Australia's credit reporting framework launched

- The government has announced the launch of an independent review into Australia's credit reporting framework.
- Broadly, the review will consider the overall efficiency and effectiveness of Australia's credit reporting framework with regard to Part IIIA of the Privacy Act a1988 (Cth) and Part 3-2CA of the National Consumer Credit Protection Act 2009 (Cth), related provisions in those Acts, and supporting regulations. Further detail is included in the Review Terms of Reference.
- The government expects the independent reviewer's report to satisfy the statutory requirements in the Privacy Act and Credit Act.
- The report is due to be provided to the relevant ministers before 1 October 2024 and to be tabled in each House of the Parliament within 15 sitting days of that House.

[Source: Attorney General's Department media release 27/02/2024]

First case on the construction of s963F: FCA decision in Australian Securities and Investments Commission v R M Capital Pty Ltd [2024] FCA 151

The Federal Court's decision in Australian Securities and Investments Commission v R M Capital Pty Ltd [2024] FCA 151 is the first case to consider the proper construction of the obligation under 963F of the Corporations Act 2001 (Cth) (the Act) for Australian Financial Services licensees to 'take reasonable steps to ensure that representatives of the licensee do not accept conflicted remuneration'.

Some key takeaways

- Broadly, Justice Jackson opines that the principles stated in contested cases concerning the construction of s961L of the Act, which requires financial services licensees to 'take reasonable steps to ensure that representatives of the licensee comply with' the best interests obligations in Part 7.7A Division 2 are applicable to the 'equivalently worded obligation in s963F' [69]. You can find discussion of the relevant principles at paras [70] to [86] of the decision.
- While Jackson J makes clear that there are no 'hard and sharp rules to give specific guidance to licensees and ASIC as to what constitutes reasonable steps' in every case (at [86]) his Honour concludes that in this case:

  [343] 'at a minimum, a financial services licensee in RM Capital's circumstances, taking reasonable steps to ensure that its representatives did not accept conflicted remuneration would have, at least:

  (a) formally adopted a clear written policy prohibiting the acceptance of conflicted remuneration, at least by the time that ban came into effect in July 2013 or soon thereafter (acknowledging the grandfathering that lasted until July 2014);

(b) informed new representatives (individuals and corporations) of that policy and its contents at induction or training sessions;

(c) adopted written procedures to check whether new products proposed to be the subject of authorisation that would or might constitute conflicted remuneration came with arrangements under which the promotors of the products offered monetary or soft dollar benefits to representatives, and if so to ascertain the details of those arrangements;

(d) if there was room for reasonable doubt about whether any such arrangements constituted conflicted remuneration, **obtained legal advice on the subject**; [emphasis added]

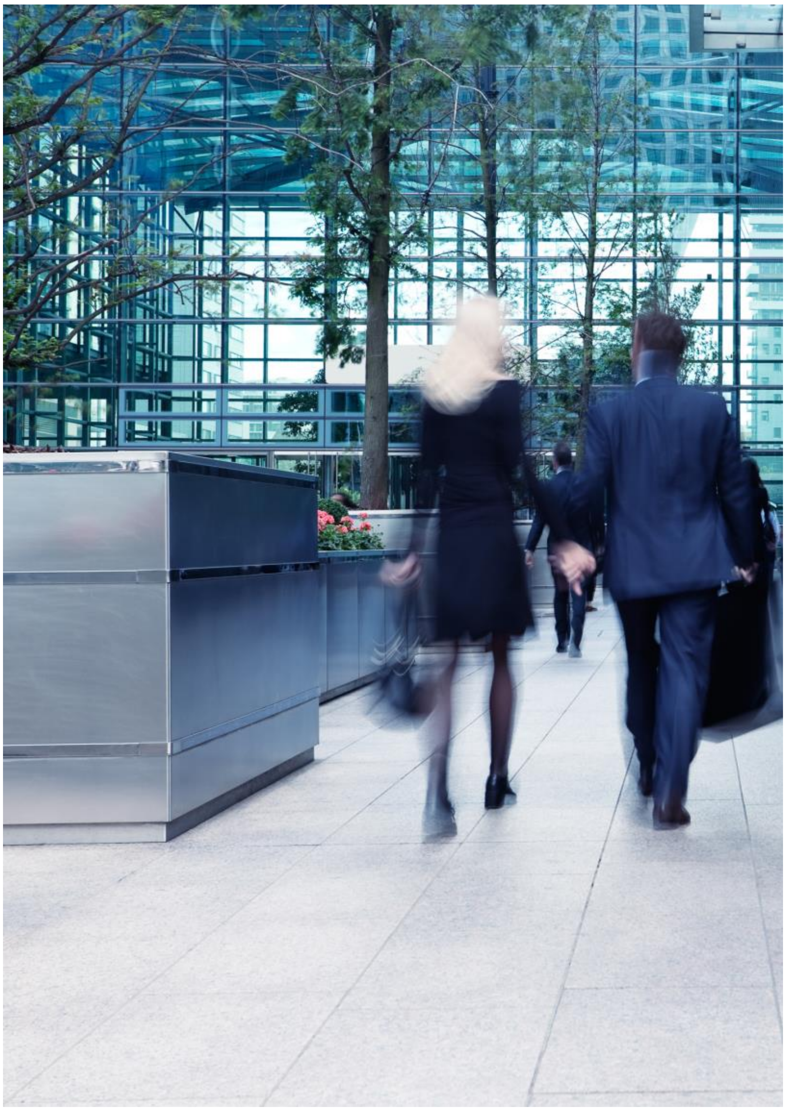
(e) if it had determined that the arrangement did involve conflicted remuneration, refused to authorise the promotion of or advice in relation to the product until the aspect of the arrangement that involved conflicted remuneration was removed;

(f) documented and implemented a training program which, as well as the induction session for new representatives already mentioned, gave representatives at least annual reminders of the existence and content of the prohibition on conflicted remuneration, and RM Capital's policy on the subject, preferably with examples; and

(g) annually conducted audits of a random selection of client files, along with annual checks as to what benefits, if any, representatives had received from the promoters of financial products, with any benefits of concern to be further investigated'.

Notably, Justice Jackson underlines that these steps are not 'unduly onerous' [345] or 'infected by hindsight' (observing that they are similar to those posited by ASIC) [346].

[Sources: ASIC media release 04/03/2024; Australian Securities and Investments Commission v R M Capital Pty Ltd [2024] FCA 151]



Insurance claims handling | ASIC has written to general insurers reminding them of their obligations to 'act efficiently, honestly, and fairly, and resolve claims in a timely manner'

- In a 5 March 2024 letter to general insurers, the Australian Securities and Investments Commission (ASIC) outlines insurers obligations to handle claims 'efficiently, honestly, and fairly and in a timely manner'.
- ASIC also reminds insurers that insurance claims handling is an enforcement priority for the regulator in 2024 and underlines its expectation that insurers 'continue to action' the issues identified in ASIC Report 768 (summarised in Governance News 16/08/2023 at p17); the Deloitte report (commissioned by the Insurance Council of Australia) and the current House Standing Committee on Economics inquiry.
- ASIC also flags that it will

'seek updates on progress in addressing these issues in our regular discussions with the ICA and with individual insurers. We also expect the industry to consider these issues as part of the current review of the Code'.

[Source: ASIC media release 06/03/2024]

Risk Management

Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023 passes both Houses

The Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023 (Cth) passed both Houses on 29 February 2024 and now awaits Assent.

The reforms in the Bill are intended to 'further strengthen Australia's implementation and enforcement of the Anti-Bribery Convention by strengthening the legal framework for investigating and prosecuting foreign bribery' and 'overcome the limitations of the current foreign bribery offence which has proven to be overly prescriptive and difficult to use'.

Key changes

Introduce a new 'failure to prevent' offence

The Bill includes a new indictable corporate offence of failing to prevent foreign bribery.

The explanatory memorandum explains that this offence, modelled on a similar UK provision, will apply where:

> 'an associate of a body corporate has committed bribery for the profit or gain of the body corporate. It will be a defence if the body corporate can establish that it had 'adequate procedures' in place to prevent the commission of foreign bribery by its associates'.

This new offence has been introduced with the aim of:

> 'overcom[ing] challenges in establishing criminal liability of businesses that engage in wilful blindness with respect to misconduct by their employees and other associates, and is intended to incentivise businesses to implement and maintain adequate procedures to prevent foreign bribery from occurring. The offence will be an incentive for companies to implement and maintain measures to prevent bribery'.

Changes to the existing foreign bribery offence

The Bill also includes changes to:

- expand the foreign bribery offence to include:
  - 'the bribery of candidates for public office (not just current holders of public office); and
  - bribery conducted to obtain a personal advantage (the current offence is restricted to bribery conducted to obtain or retain a business advantage)'
- remove the existing requirements that:
  - 'the benefit or business advantage be 'not legitimately due' and replaces it with the concept of 'improperly influencing' a foreign public official; and
  - the foreign public official be influenced in the exercise of their official duties'.

The changes in the Bill also clarify that:

> 'the foreign bribery offence does not require the prosecution to prove that the accused had a specific business, or business or personal advantage, in mind, and that the business, or business or personal advantage, can be obtained for someone else'.

Timing

The bulk of the changes will commence six months after the Bill receives Assent.

[Source: Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023]

Reserve Bank of NZ announces new 'cyber resilience' disclosure requirements

Following consultation, the Reserve Bank of New Zealand (RBNZ) has confirmed it will go ahead with phasing in the following new 'cyber resilience' disclosure requirements for registered banks, non-bank deposit takers and insurers over the course of 2024.

- Material cyber incident reporting requirement – entities will need to report 'material' cyber incidents to the RBNZ within 72 hours (or earlier if practicable)
- All cyber incidents will need to be reported to the RBNZ (regardless of materiality) periodically. Large entities will need to report every six months. Other entities will need to report annually.
- Regulated entities will also need to complete self-assessment surveys on their cyber resilience. Large entities will need to report annually, and other entities will need to report every two years.

[Source: RBNZ media release 04/03/2024; Cyber resilience data collection: Response to submissions and final decisions]

Modern Slavery | Committee recommends passage of the Anti-slavery Commissioner Bill (provided certain changes are made)

Status update on Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (Cth)

Broadly Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (Cth) (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

The Labor Chaired Senate Legal and Constitutional Affairs Legislation Committee handed down its report, recommending the passage of the Bill (subject to certain amendments being made) on 28 February 2024.

Here are the changes the Committee recommended be made (before the Bill is passed)

The committee recommended that:

- 'the term "sensitive information", particularly regarding information related to the international relations of Australia, be clarified in either the bill or the explanatory memorandum'.
- 'the bill be amended to include a requirement that the Anti-Slavery Commissioner develops specific guidelines in their strategic plan to support victim-survivors of modern slavery'.
- 'the bill be amended to include a requirement that the Anti-Slavery Commissioner engages with victim-survivors of modern slavery in carrying out the functions of their role'.
- 'while the Anti-Slavery Commissioner should not have the power to investigate individual cases of modern slavery, once established, the office of the Commissioner should make appropriate arrangements, for example a memorandum of understanding, with relevant law enforcement agencies to facilitate the referral of cases for investigation as requested'.

In additional comments in the report, Liberal Senator Paul Scarr agrees with the majority recommendations (above) – and therefore with the passage of the Bill – subject to the recommended clarification around the term 'sensitive information' being made in the Bill itself, not in the explanatory memorandum.

The Greens have signalled their intention to move various amendments to the Bill including pushing to provide the Anti-Slavery Commissioner with:

> 'far stronger compliance powers to monitor and enforce compliance by corporate Australia with modern slavery statements and the power to force government agencies to provide evidence and materials as required'.

Outlook

The Bill has progressed to second reading in the Senate, having passed the House of Representatives without amendment.

Parliament is due to sit again on 18 March 2024.

[Source: Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023]

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