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Boards and Directors

United States | Board refreshment is a priority but the pace is slow: The latest annual SSBI board index has found gender diversity and the acquisition of digital skills are key priorities for S&P 500 boards, but that the pace of change is slow due to the very low rates of board turnover.

The thirty third annual Spencer Stuart Board Index 2018 (SSBI Index), an annual analysis of boardroom trends in the S&P 500, has found a number of parallels between trends around board composition this year and trends affecting the boardroom in recent years, particularly the desire to refresh boardroom skills. This is attributed to intensifying investor interest/concern about the composition, diversity and quality of the boardroom and the pressures of an increasingly complex business/risk environment. However, despite demand for board refreshment, the low rate of board turnover means that the pace of change and therefore the impact of change is slow.

Some Key Findings

- **Appointment rate:**
  - 57% of S&P 500 boards appointed at least one new director and 22% appointed two or more directors this year. Overall, the average S&P 500 company added 0.88 new directors (largely unchanged from 2017), replacing 0.84 directors who departed over the year.
  - 428 new independent directors were appointed in the 2018 proxy year, up 8% from last year and the highest number since 2004.
- **Experience as a CEO or top corporate executive no longer appears to be pre-requisite for board service:** The number of new S&P 500 directors with prior or current experience as CEOs, chairs, vice chairs, presidents or COOs has fallen to 35% (from 47% 10 years ago) and one third of directors have no prior public board experience.
- **Experienced CFOs/financial executives and investment professionals appear to be in demand as directors:** 26% of the new S&P 500 directors have financial backgrounds in 2018 (up from 18% in 2008).
- **Demand for younger directors (especially for 'digital director roles) appears to be increasing**. Two-thirds of S&P500 nominating and governance committee members reported considering 'next gen' candidates who are 50 years old or younger, particularly as they seek directors with technology or digital backgrounds and 17% of new directors actually appointed are 50 or younger.
- **40% of new board appointees were women** (the highest proportion since Spencer Stuart began tracking this data in 1998). However, this had only a minimal impact on overall female board representation. The percentage on women on S&P500 boards is at 24% (up from 22% in 2017 and 18% in 2013). This is attributed to board low turnover.
- **Minority representation has stalled (or gone backwards):** Minority men (defined as African-American, Hispanic/Latino or Asian) experienced a slowdown, representing 10% of the new independent directors, down from 14% last year. This slowdown also can be seen in the representation of minorities at the top 200 S&P 500 companies. In 2018, 17% of the independent directors of the top 200 companies are male or female minorities, unchanged from last year and up only slightly from 14% in 2008.
- **Boards are getting older (and are likely to remain that way despite the proliferation of mandatory age limits):**
  - The average age of directors is 63 and only 16% of directors on boards with retirement policies are within three years of the age cap. 28% of directors on boards without mandatory retirement policies are 70 or older.

- Three-quarters of the independent directors who left S&P 500 boards in the past year served on boards with mandatory retirement ages and the age limits influenced a majority of these departures.
- Of the 71% of S&P 500 boards with age caps, 43.5% have set the retirement age at 75 or older (compared with 11% in 2008).

- **50% of S&P 500 boards split the chair and CEO roles** (a repeat of last year) and slightly more than 30% of S&P 500 boards are now chaired by an independent director (up from 28% last year and 16% in 2008). Although the roles and responsibilities of an independent chair of the board and a lead director are frequently similar, their compensation is different. Independent chairs receive, on average, an additional $165,000 in annual pay, while lead directors are paid an average yearly supplement of around $40,000.

Survey of S&P 500 Nominating and Governance Committee Members

Separately, the results from a survey of over 170 S&P 500 nominating and governance committee members found:

- **The low board turnover rate looks set to continue:** participants anticipate appointing/replacing one director each year over the next three years.
- **Diversity (especially gender diversity) is a key concern for S&P 500 companies**. The top three issues identified by the surveyed directors over the past year were: boardroom succession planning (96%), board diversity (93%) and new director skills (86%). 74% of participants said boardroom diversity will be a key focus over the next few years and 62% of the respondents identified gender diversity as a current top priority. Minority representation was the fourth-ranked priority, prioritised by 43% of the surveyed directors. Other priority skills and backgrounds of the surveyed directors include: Active CEO/COO (49%); Technology experience (48%); Retired CEO/COO (41%); Global perspective (41%) and Digital experience (40%).
- **Key priorities in ensuring board effectiveness** were: board evaluations (75%), board diversity (74%) and board leadership (48%).

[Source: Harvard Law School Forum for Corporate Governance and Financial Regulation 13/11/2018]

Diversity

United Kingdom | Third annual Hampton-Alexander Review update released: on track to achieve the 33% female board/senior management representation target in the UK's largest companies, but outside the FTSE 100 the female appointment rate would need to increase to 50% for the target to be reached.

Context: In 2016, the Hampton-Alexander Review (Review) — a UK government-commissioned industry led initiative aimed at increasing the number of women in leadership positions of FTSE 350 companies (around 23,000 leadership roles) — set a target of 33% female representation on FTSE 350 boards and senior management roles (executive committee and direct reports to the executive committee roles), by the end of 2020.

Third annual progress update released: work to do to meet the target outside the FTSE 100?

The Review has now released its third annual progress update. Overall, it found that if progress continues at a similar rate, the FTSE 100 is 'on track' to achieve the 33% target for Women on Boards by 2020. However, outside the FTSE 100 progress has been slower. If the target is to be reached within the timeframe, it will be necessary for companies to increase the female appointment rate for boards and senior leadership positions to 50%.

Some Key Findings

- The number of female chairs in the FTSE 350 rose marginally from 17 to 22. The number of female CEOs actually fell from 15 to 12.

- The three companies with the highest representation of women were Burberry (with 58.5% women on their combined executive committee and direct reports team) followed by Next and Marks and Spencer.

FTSE 100 saw the greatest rate of change

- **The number of women on FTSE 100 boards has exceeded 30% for the first time:** The number of women on FTSE 100 Boards increased to 30.2% in 2018, up from 27.7% last year. Forty FTSE 100 companies have already met the 33% target (or are well on their way to doing so) by 2020. A further 591 companies have yet to reach the target.
- **The number of women on the Combined Executive Committee and Direct Reports increased to 27%** in 2018, up from 25.2% last year.

FTSE 250

- **Progress is slower outside the FTSE100:** The number of women on the Combined Executive Committee and Direct Reports in FTSE 250 companies increased marginally to 24.9% in 2018 (from 24% last year). 78% of appointments to Executive Committees went to men and 69% of newly available roles in the Direct Reports went to men.
- **There are now sixty-two FTSE 250 companies with three or more women on their boards.**

Boards with zero women? Overall, the number of boards with zero women decreased 50% on last year (from 10 in 2017 to 5 in 2018).

'One and done' boards? There remain 75 companies in the FTSE 350 with only one woman on their board. The report calls on companies to address this stating: 'It is time to call out the 75 at "One & Done" boards that are dragging overall progress downwards. The 33% target is a collective effort and it is incumbent on every FTSE 350 listed company to play their part - get with the new norm - today one woman at the table, is little different to none!'

Progress towards the target?

If progress continues at a similar rate, the FTSE 100 is 'on track' to achieve the 33% target for Women on Boards by 2020.

However, outside the FTSE 100 'a step change is needed' in pace, which means half of all available appointments in the next two years - both Boards and the Combined Executive Committee and Direct Reports, need to go to women to achieve the 33% target.

[Sources: FTSE Women Leaders: Hampton Alexander Review media release 13/11/2018; Hampton-Alexander Review November 2018]

Responses to the report

Chair of the Review Sir Philip Hampton said progress was encouraging, and that the new corporate governance code may support further improvement. 'It is clear that gender balance on FTSE boards has undergone a dramatic shift in recent years and this progress continues. However, we must significantly increase the number of women in senior leadership roles if we are to harness the skills of women for the benefit of business and the UK economy' he said.

MP Nicky Morgan has reportedly questioned whether targets are achievable given the rate of progress: 'This lack of progress calls into serious question the possibility of achieving the UK's target of 33 per cent by 2020 which I set as Minister for Women and Equalities in 2015'

[Sources: CityAM 10/11/2018; Sky News 09/11/2018; [registration required] The FT 13/11/2018]

The government has announced $3.6m in funding for a new program intended to better equip and encourage young women to become entrepreneurs

Ahead of the delivery of the inaugural Women's Economic Security Statement, the government has announced a new education initiative to encourage young women, especially in rural and regional areas, to become entrepreneurs.

The program is expected to engage around 55,000 participants and will utilise new and existing digital resources with the aim of boosting digital skills and entrepreneurship. The program will also include in-person training to build digital literacy and 'entrepreneurial acumen' as well as mentorship to participants.

The government said that it would work with partners in the digital industry and non-government sector to deliver the program, and will match private sector funding to do so.

A number of successful female entrepreneurs and leaders will be appointed as ambassadors of the program.

[Sources: Joint media release Treasurer Josh Frydenberg and Minister for Jobs and Industrial Relations and Minister for Women Kelly O'Dwyer 13/11/2018]

Diversity at Microsoft is improving? Fortune reports that Microsoft has released diversity figures showing (small) increases in the number of women and minorities across all levels of the company.

Fortune reports that Microsoft female representation at all levels of Microsoft has improved over the last year.

- Overall, between June 30, 2017 and June 30, 2018, Microsoft's global workforce went from 25.5% to 26.6% female. Fortune comments that despite the increase, the numbers are actually lower than they were in 2015 when women comprised 27.5% of the company's workforce. Microsoft attributes this to the 2016 divestiture of Nokia and the resulting change in its workforce.
- In technical roles, women's representation grew from 18.5% to 19.9%.
- Among interns, women went from 40.4% to 42.5%.
- In leadership, women's representation increased from 18.8% to 19.7%.

Microsoft has also reportedly made improvements in the representation of minorities. The number of black and Latinx employees has reportedly increased 33% over the past four years and now stands at 4.1% and 6% respectively (in the US workforce). Fortune comments that this level of representation is similar to Microsoft competitors Apple (9% black and 13% Hispanic in 2017) and Google (2.5% black and 3.6% Latinx in 2018).

The progress is reportedly attributed by the company to both changes in hiring policies and to the fact that a portion of executive compensation has been tied to diversity and inclusion goals since 2016. Reportedly, the company has also expanded its parental leave policy, improved its unconscious bias training, and ended forced arbitration for sexual harassment claims.

[Source: Fortune 14/11/2018]

Remuneration

Top Story | The gender pay gap is narrowing in Australia: Workplace Gender Equality Agency (WGEA) data shows that the gender pay gap has declined every year over the past five years due to positive employer action on the issue.

The Workplace Gender Equality Agency (WGEA) has released the latest update on progress towards gender equality. The report found that over the last 5 years there has been a 'steady increase' in the number of women in management roles and that 'strong growth in employer action' in areas such as overall gender equality policies and strategies, pay equity and flexible work has driven decreases in the gender pay gap.

However, the data also highlights areas for improvement. WGEA Director Libby Lyons said: 'Access to parental leave has not improved, with the provision of paid primary carer’s leave actually going backwards. The glass walls persist in industry segregation, which remains deeply entrenched in Australia. The glass ceiling is still a barrier for women at the CEO and board levels… We now need even more employers to take action so that we can accelerate the momentum for gender equality in Australian workplaces'.

Some Key Findings

- **The gender pay gap has declined every year over the past five years:** According to WGEA data, the gender pay gap has decreased 3.4% (from 24.7% to 21.3%) over the past five years. However, women working full time still earn on average over $25,000 a year less than men in total remuneration.

- **Women have increased their presence in management over the past five years.** Women now comprise over 40% of the managers in the WGEA dataset that is, 35% of senior managers and over 30% of executives/general managers and 30.5% of key management personnel (one level down from CEO). Improvements over the period ranged from 2.8% improvement in the manager category to 4.4% in the key management personnel category.
- **Pay gaps persist across every industry, manager category and non-manager occupation**: The five-year data trends show 'virtually no movement' in gender segregation across Australian industries with six out of ten Australians still working in industries dominated by one gender. There was also little improvement in either access to paid parental leave or the representation of women at CEO level or on boards. Women now represent 28.1% of board members (2.7% increase on 2013-2014), 13.7% of chairs (1.7% increase on 2013-2014) and 17.1% of CEOs (1.4% increase on 2013-2014) in the WGEA data set.
- **More companies undertaking pay gap analysis:** According to WGEA, the number of companies undertaking a gender pay gap analysis has increased from 24% in 2013-2014 to 41.6% in 2017-2018 making this the area that showed the most positive improvement over the period. However, of the companies that undertook a pay gap analysis, 41.5% took no action on the results.
- **Increased implementation of policies/strategies, but few companies include gender equality KPIs for managers:** Almost three-quarters of employers (74.3%) now have an overall gender equality strategy and/or policy (up from 66.2% in 2013-14). In addition, WGEA found that the there was a 22% increase in the number of organisations with pay equity objectives included in their remuneration policy and/or strategy. However, despite the strong growth in the number of employers implementing gender equality policies and/or strategies the number of employers with key performance indicators (KPIs) for managers relating to gender equality is at 31.4%.
- **Access to employer-funded paid parental leave virtually unchanged:** The number of employers offering primary carer's leave dropped from 48.5% in 2013-2014 to 47.8% in 2017-2018 (down 0.7%). For secondary carers, there was a 3% increase from 38.8% of employers in 2013-2014 to 21.8% of employers in 2017-2018.

[Sources: WGEA media release 13/11/2018; WGEA 2017-2018 gender equality scorecard; WGEA 5 year data comparison; The SMH 13/11/2018; SBS 13/11/2018]

United Kingdom | Mandatory reporting does appear to be having a positive impact on narrowing the gender pay gap so is it time to broaden reporting requirements to include ethnicity and disability?

UK think tank, the Institute for Public Policy Research Progress (IPPR) has released a report on progress towards narrowing the UK gender pay gap and more particularly the success of public pay gap reporting requirements in driving progress on the issue.

The report argues that though the regulations are in their 'infancy' (the UK government introduced compulsory gender pay reporting in 2017, requiring all employers with 250 or more employees to report on their gender pay gap) there is some evidence that mandatory reporting is having a positive impact. For example:

- Compliance with the regime is high, with 100% of employers within scope – over 10,000 in total – reporting within 10 weeks of the deadline.
- The regulations have raised the profile of the gender pay gap, prompting a lively debate, greater attention from policy-makers, and a greater focus at senior levels within organisations on gender equality.
- The regulations have encouraged employers to investigate and understand their gender pay gap, and many have engaged with their workforce on the issue.

- The regulations appear to have driven employers to take further actions towards tackling the gender pay gap. Four in five have considered or taken further action to narrow their pay gap in response to the regulations.

On this basis, the report argues that consideration should be given to further extending and enhancing the reporting regime. More particularly, the report recommends (among other things):

- Reporting requirements should be widened to include medium-sized employers (50–249 employees) with a simplified methodology and a requirement to report only every two years.
- Employers should be required to provide a narrative report alongside their pay gap information.
- To address wider pay inequalities all employers with 50 or more employees should be required to produce a fair pay report, including: their gender pay gap; their ethnicity pay gap (requirement for employers with 250 or more employees); their disability pay gap (requirement for employers with 250 or more employees); the pay ratio between their CEO and the median employee; the proportion of their workforce earning below the living wage; and a fair pay narrative, setting out their understanding of their pay gaps, and their plans to ensure fair pay.
- Large employers should be required to publish pay ranges internally to their employees. Employees should have a right to request comparison data of pay levels for those doing similar work and a right to request an independent pay audit.
- The Equality and Human Rights Commission should produce an annual fair pay review, based on the data produced by individual employers. This should include analysis of trends in the data and recommendations both for employers and government.

[Sources: IPPR media release 14/11/2018; IPPR Report: The fair pay report: How pay transparency can help tackle inequalities; [registration required] The FT 14/11/2018]

Other Shareholder News

United Kingdom | The Wates Corporate Governance Principles for Large Private Companies will be officially launched on 12 December

The Financial Reporting Council (FRC) has announced that the *Wates Corporate Governance Principles for Large Private Companies* will be officially launched, following extensive consultation, on 12 December 2018 (see: Governance News 15/06/2018).

The FRC notes that adherence to the Principles, will satisfy new regulatory reporting requirements (obliging large private companies to include a statement in their annual report as to whether they follow a code of corporate governance) that will come into effect from 1 January 2019. 'The Wates Corporate Governance Principles have been designed to give the diverse range of companies to whom this legislation applies a flexible yet challenging code which can aide their compliance with the new law' the FRC states.

[Source: FRC media release 12/11/2018]

Meetings and Proxy Advisers

45.46% 'first strike' against the remuneration report at Goodman Group despite strong financial performance

Despite the company's strong financial performance, 45.46% of Goodman Group investors voted against the remuneration report and a similar proportion voted against the issue of executive performance rights to executives.

Reportedly, shareholders objected to both the quantum of pay and the structure of incentive schemes for executives including incentives paid to CEO Greg Goodman (who the Chair pointed out in his address to the meeting was the only Australian CEO ranked in the top 100 best performing CEOs by the Harvard Business Review).

The Chair said that the level of pay is justified

The Chair's address included three slides on pay for performance, which identified a number of reasons to justify executive remunation. These included: the company's strong financial performance, the 'high proportion of total remuneration' at risk for executives, the fact that the long term incentive plan is aligned to 'long term decision making', and the need to retain talent that is highly sought after by competitors. 'While we do pay well, it is because they have created this value' the Chair said.

Media reports commented that this is the second strike for the company within two years (the last in 2016).

[Sources: Goodman Group ASX Announcements: Results of 2018 AGM 15/11/2018; AGM Chairman's address 15/11/2018; [registration required] The AFR 15/11/2018; [registration required] The Australian 15/11/2018]

Disclosure and Reporting

Consultation on changes to reporting requirements: An estimated 2200 companies will no longer be required to lodge a financial report, a director's report or an auditor's report with ASIC each financial year under proposed changes

The government has released for public consultation exposure draft regulations: (draft) *Corporations Amendment (Proprietary Company Thresholds) Regulations 2018* and a draft explanatory statement outlining proposals intended to reduce the financial reporting burden for some proprietary companies currently considered 'large' for the purposes of Australian Securities and Investments Commission (ASIC) reporting.

More particularly, the draft *Corporations Amendment (Proprietary Company Thresholds) Regulations 2018* (the draft regulations) proposes to double the existing thresholds (last updated in 2007) for determining what constitutes a 'large' proprietary company.

This would mean that a company would only be required to meet ASIC annual reporting obligations (to prepare and lodge a financial report, a director's report and an auditor's report with ASIC each financial year) if it reaches two of the following three thresholds:

- $50 million consolidated revenue (increased from $25m);
- $25 million (increased from $12.5 million) or more in consolidated gross assets;
- at least 100 employees (increased from 50 employees).

In a statement, Treasurer Josh Frydenberg and Minister Michaelia Cash said that the proposed measures will benefit around a third of large proprietary companies (2,200 out of approximately 6,600) by reducing the regulatory cost on these businesses by $81.3 million annually, as the average cost of preparing and auditing financial reports is approximately $36,950 per company, per year. They also noted that companies will still be legally required to keep written financial records and may be required to prepare or audit financial reports if directed by ASIC or 5% or more of their shareholders.

Timeframe: Consultation on the proposed changes will close on 14 December. The proposed commencement date for the reforms is 1 July 2019 (ie it's proposed that the changes will apply in relation to financial years beginning on or after 1 July 2019).

Narrow the number of companies required to have a whistleblower policy under proposed reforms: Treasury notes that increasing the proposed changes to the thresholds as outlined above would reduce the number of proprietary companies required to have in place a whistleblower policy under the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* (if passed by Parliament). However, Treasury writes that despite this, the proposed changes will not impact the whistleblower protections afforded to employees of these companies.

[Note: *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* was introduced into the Senate in December of 2017 and is yet to pass either House. For an overview of the implications of the Bill see: MinterEllison update 24/04/2018.]

Government proposes to double the value limit available under employee share schemes: Separately, the Treasurer and Minister for Small and Family Business Michaelia Cash announced plans for new measures intended to improve the ability for small businesses to offer employee share schemes to help employers attract, retain and motivate employees and grow their businesses. 'The Government is simplifying the current regulatory framework, reducing the time and cost burden for businesses - an initiative that is particularly important for start-ups in early stages of growth' they said. Proposed changes include:

- creating a dedicated exemption for disclosure, licensing, advertising and on-sale obligations under the Corporations Act 2001;
- increasing the value limit of eligible financial products that can be offered in a 12 month period from $5,000 per employee to $10,000 per employee;
- expanding employee share schemes to include contribution plans, where an employee can make a monetary contribution to acquire eligible financial products; and
- allowing small businesses to offer employee share schemes without publicly disclosing commercially sensitive financial information unless they are otherwise obligated to do.

[Sources: Treasurer Josh Frydenberg and Minister for Small and Family Business, Skills and Vocational Education Michaelia Cash joint media releases16/11/2018; 13/11/2018; [registration required] The AFR 15/11/2018]

In Brief | Myer shares are in a trading halt until 20 November (or when the company releases an announcement to the market). This follows an AFR report which suggested that undisclosed quarterly sales figures indicate the company may be in breach of its continuous disclosure obligations. Myer issued a statement to the market confirming that 'The Company is well aware of its continuous disclosure obligations and confirms it is in compliance with them' prior to requesting the pause in trading.

[Sources: ASX market announcement 16/11/2018; Myer response to AFR article 16/11/2018; [registration required] The AFR 15/11/2018; 16/11/2018]

Overseas Developments

United States | Snap Inc is reportedly under investigation by SEC and the DOJ in relation to its 2017 IPO disclosure

According to media reports, Snap Inc has said the US Department of Justice (DOJ) and US Securities and Exchange Commission (SEC) have issued subpoenas and other requests for information in relation to SNAP's 2017 initial public offering disclosures. Reportedly, the company said that the regulators are investigating allegations SNAP misled investors ahead of its initial public offering (IPO) last year. Snap reportedly said that though it does not have complete visibility of the investigations, it believes that the regulators are investigating the company's alleged failure to disclose the negative impact of competitor Instagram on its H2 2018 growth. Some media reports suggest that the regulators may also be investigating the alleged failure of the company to disclose a whistle-blower lawsuit by a former employee who claimed inaccuracies in the company's calculation and reporting of daily active users.

Snap has reportedly said: 'Snap has been responding to subpoenas and requests for information made by staff from the DoJ and the SEC…It is our understanding that these regulators are investigating issues related to the previously disclosed allegations asserted in the class action about our IPO disclosures…While we do not have complete visibility into these investigations, our understanding is that the DoJ is likely focused on IPO disclosures relating to competition from Instagram'.

[Sources: Reuters 14/11/2018; [registration required] The FT 15/11/2018; [registration required] The AFR 14/11/2018]

In Brief | No justification for companies not to disclose political spending to shareholders? A recent post on Harvard Law School Forum (to which SEC Commissioner Jackson contributed prior to joining the SEC) makes the case for SEC to act on a controversial rulemaking petition urging it to make rules requiring disclosure of political spending (which has attracted over 1.2 million comments since its submission seven years ago).

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 14/11/2018]

Short and Long Termism

In Brief | BlackRock continues to see long-term potential in tech stocks: The AFR reports that despite other investors pulling back from the technology sector, a Bank of America Merrill Lynch Survey has found that BlackRock continues to see 'significant growth potential' in the sector.

[Sources: [registration required] The FT 14/11/2018; [registration required] The AFR 14/11/2018]

Regulators

Top Story | APRA has released the terms of reference for its enforcement review

The Australian Prudential Regulation Authority (APRA) released the Terms of Reference for a review of its enforcement strategy on 12 November. The review will make recommendations on which enforcement issues APRA should consider acting on, what factors the regulator should take into account, and whether there are any practical or legislative impediments to APRA pursuing a stronger approach.

The review will be completed over the first three months of 2019 and the final recommendations and APRA's enforcement strategy will be released publicly (following consideration by APRA). APRA writes that the Review is being undertaken in recognition of both its new regulatory responsibilities under the Banking Executive Accounting Regime (BEAR), and in light of the case studies examined by the Financial Services Royal Commission.

Key Points

Scope of the review

- **Forward looking review:** The Review will conduct a 'forward looking examination of APRA’s approach to the use of enforcement to achieve its prudential objective of ensuring that financial promises made by its supervised institutions are met within a stable, efficient and competitive financial system (the Review)'.
- **Impediments to enforcement action?** The Review will examine APRA’s current enforcement strategy and infrastructure, and in particular, how it interacts with APRA’s core supervisory approach. It will assess any legal, practical or structural impediments to APRA taking enforcement action where such action is appropriate.
- The Review will make recommendations on the following:
  - the breadth of issues APRA seeks to address through public and non-public enforcement action;
  - the considerations in determining when APRA should take enforcement action to hold entities and individuals to account, including under the Bank Executive Accountability Regime (BEAR) and other powers;
  - the considerations in determining whether and when it may be appropriate for APRA to take public enforcement action, including litigation, to achieve general deterrence effects in appropriate cases; and
  - APRA’s internal governance, organisation, enforcement strategy, resourcing and any other factors relevant to APRA’s enforcement function.
- **Areas of focus:** In examining these issues the terms of reference state that the review will focus on the following.
  - 'The relationship between APRA’s supervisory approach and enforcement action;
  - APRA’s process for identifying candidate enforcement actions;
  - APRA’s decision-making process on whether to take enforcement action;

- APRA's approach to breach reporting and whistle-blowers;
- the weight given to factors (including but not limited to cost, timeliness, remediation, precedential value) in determining whether to take enforcement action;
- APRA's approach to publicly disclosing enforcement priority areas;
- whether internal organisational change would be required to achieve an appropriate level of enforcement action;
- whether the resources and skill sets currently within APRA are adequate to achieve an appropriate level of enforcement action;
- whether there is greater need for APRA to more closely cooperate with other regulatory agencies when dealing with enforcement-related matters;
- whether the current and proposed legislative framework is adequate to support the recommended approach; and
- any other relevant matters agreed by the APRA Members from time to time'.

Governance

The Review will be conducted by APRA Deputy Chair John Lonsdale and supported by APRA staff and external advisors as necessary.

An external advisory panel comprising: Dr Robert Austin (Former NSW Supreme Court Judge), Commissioner Sarah Court (Australian Competition and Consumer Commission) and Professor Dimity Kingsford Smith (Director of the Centre for Law, Markets and Regulation, University of New South Wales) has been appointed to provide an expert perspective on matters arising from the Review.

Timing

- Draft recommendations will be available to APRA Members by 28 February 2019 with the final Review to be presented to the APRA Members by 31 March 2019.
- Following consideration of the Review's recommendations, APRA expects to release publicly both the final review and APRA's enforcement strategy.

[Source: APRA Terms of Reference: Enforcement Strategy Review 12/11/2018]

Top Story | APRA Deputy Chair has outlined APRA's priorities for 2019: Consultation on the development of a formal prudential framework for 'recovery and resolution' among the key priorities for 2019

In his speech to the FINSIA Regulators' Event 2018 entitled *APRA in 2019: an evolving approach, a consistent purpose*, Australian Prudential Regulation Authority (APRA) Deputy Chair John Lonsdale has outlined the regulator's policy priorities for 2019. Among them is preparation of the financial system to weather any potential economic 'cold snap' after 27 years of economic growth, as well as the review of its enforcement approach.

New structure

Mr Lonsdale outlined how his appointment as APRA Deputy Chair will affect responsibilities within the APRA executive group. He said that his role will be focused horizontally across all APRA-regulated sectors and include: implementation of the Banking Executive Accountability Regime (BEAR), leading efforts to strengthen APRA's relationship with other regulators, including the Australian Securities and Investments Commission (ASIC), the Australian Competition and Consumer Commission (ACCC) and AUSTRAC, APRA's enforcement review, and investigation into recovery and resolution preparedness and crisis management.

Priorities for 2019

Mr Lonsdale identified a number of policies and actions aimed at ensuring banks, insurers and super funds are 'well-placed to withstand any potential period of tougher economic conditions' (should the need arise).

- **Review of enforcement strategy:** Mr Lonsdale said that a key priority for APRA over the first three months of 2019 is the review of our enforcement strategy. 'The review will make recommendations on which enforcement issues APRA should consider acting on, what factors we should take into account, and whether there are any practical or legislative impediments to us pursuing a stronger approach' he said.

[Note: The terms of reference, panel and timeline for APRA's review of its enforcement strategy are outlined in a separate post in this issue (19/11/2018 issue) of Governance News.]

- **APRA will remain a supervision led as opposed to an enforcement led regulator:** Mr Lonsdale said that though APRA acknowledged the need to reconsider its enforcement approach, that the regulator will, 'remain a supervision-led, rather than enforcement-led, regulator with a focus on pre-emptively tackling problems before they compromise an entity's ability to meet its obligations to beneficiaries, or rectifying adverse outcomes in the best interests of customers'.

- **Consultation on the development of a formal prudential framework for 'recovery and resolution' will be a priority in 2019:** Mr Lonsdale said that APRA will consult on the development of a formal prudential framework for 'recovery and resolution' to prepare institutions in the event of a 'financial cold snap'. He noted that the passage of legislation expanding APRA's crisis management powers and providing a clear basis upon which it can make prudential standards on resolution would facilitate this, and that APRA's proposal to require ADIs to lift their levels of loss absorbing capital (as outlined in a recent discussion paper) would also support this work. Commenting on APRA's crisis resolution powers, Mr Lonsdale said that 'these are powers APRA hopes never to need however possessing a strong framework to manage failures and crises is a critical component of a resilient financial system'.

[Note: The legislation referred to by Mr Lonsdale appears to be: *Financial Sector Amendment (Crisis Resolution Powers and Other Measures) Act 2018* which provides APRA with powers to 'set requirements on resolution planning ensure banks and insurers are better prepared for a crisis' and an expanded set of crisis resolution powers that 'equip APRA to act decisively to facilitate the orderly resolution of a distressed bank or insurer'. Also possibly, *Treasury Laws Amendment (Banking Measures No1) Act 2018* which (among other things) provides APRA with a reserve power to make rules in respect of the lending activities of non-ADI lenders. See: Governance News 16/02/2018]

- **Basel III a priority for 2019:** 'With ADIs well on track to meet their "unquestionably strong" increased capital levels, 2019 will see APRA make further advancements towards implementing the final elements of the Basel III capital framework for ADIs' Mr Lonsdale said. He added that a 'key component' will be 'rethinking how Australia's relatively more conservative capital approach can be explained to provide greater transparency about the strength of our banks and more flexibility in times of stress.'

- **Re-examination of cases of potential misconduct raised during the Financial Services Royal Commission:** Mr Lonsdale said that APRA is re-examining cases of potential misconduct by APRA regulated entities raised during the Financial Services Royal Commission 'where the evidence presented was either new to APRA or contradicted what we had previously been told. That process will continue into 2019, and may well lead to formal enforcement action, should we deem it warranted'.

- **Continuing to administer and monitor the BEAR** to ensure it is being followed and understood will be a key priority for us in 2019. The review of our broader enforcement strategy will also encompass the BEAR, he said.

- **'Member outcomes package of superannuation reforms' will be an area of ongoing focus:** Mr Lonsdale said that APRA expects that the 'member outcomes package' of superannuation reforms is expected to be finalised soon and will be an area of 'ongoing focus in 2019'. Mr Lonsdale also said that APRA will remain engaged with trustees of underperforming funds, and that APRA welcomes proposed reforms before Parliament giving it power to direct licensees to take specific actions at an earlier stage – including merging or winding up should that be in the best interests of their members.

[Note: This appears to refer to *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* which was introduced into the Senate on 14 September 2017 and has reached second reading stage (see: Governance News 02/08/2018) and *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017* which was introduced into the House of Representatives on 14 September and passed the House on 23 October. The Bill is currently at second reading stage in the Senate. Assistant Treasurer Stuart Robert has recently indicated that the government intends to push forward with both Bills and a number of other superannuation reform Bills. Mr Robert's comments are covered in a separate post in this issue (19/11/2018 issue) of Governance News]

- **Alignment of the capital framework for the private health insurance sector with that used in life and general insurance** was also identified by Mr Lonsdale as a priority.

[Note: APRA has released further detail around this which is covered in separate posts in this issue (19/11/2018 issue) of Governance News.]

- **Financial Services Royal Commission response:** Mr Lonsdale also said that 'APRA keenly awaits the final report of the Royal Commission. Both the report, and the Government's subsequent response to its recommendations, will become high priorities for us once they are made known, and we are confident that the financial system will ultimately emerge stronger from the scrutiny'.

[Sources: Speech by John Lonsdale, APRA Deputy Chair to the FINSIA 'The Regulators' event 2018 15/11/2018; [registration required] The AFR 15/11/2018; [registration required] The AFR 15/11/2018]

Alignment of capital requirements for life and general insurers with new accounting standard: APRA has outlined its planned approach for integrating accounting standard (AASB 17 Insurance Contracts) into the capital and reporting framework for Life and General Insurers

The Australian Prudential Regulation Authority (APRA) has released an update on its proposed plan for integrating new accounting standard: *AASB 17 Insurance Contracts* (AASB 17) into the capital and reporting frameworks for life and general insurers (the Life and General Insurance Capital (LAGIC) framework).

Separately, APRA is also reviewing the capital framework for private health insurers (PHIs).

[Note: The review of capital requirements for PHIs is covered in a separate post below.]

AASB 17: APRA writes that AASB 17 requires all insurance contracts to be accounted for in a consistent manner, with a view to making it easier for users of financial statements to compare the financial statements of similar insurers.

Review considering how to integrate AASB 17 into the LAGIC framework

APRA has commenced a review into how best to integrate AASB 17 into the existing LAGIC framework.

The Review will cover:

- the extent to which the AASB 17 liability valuation can, with adjustments, be used for capital purposes, including the definition of the capital base;
- the treatment of participating policyholders under the Life Act, including whether the Variable Fee Approach, General Model and/or Premium Allocation Approach can form the basis (with adjustments) for determining profits for that purpose;
- amendments to any part of the LAGIC framework necessary to address the integration of AASB 17 into the framework or to address other identified issues with the framework; and
- any necessary amendments to APRA reporting requirements.

APRA also notes that as aligning existing prudential standards with AASB 17 requirements is likely to involve amending most or all of the capital prudential standards, further amendments to the LAGIC framework will also be considered.

Timeline? AASB 17 is effective for annual reporting periods beginning on or after 1 January 2021 (though APRA notes that this may be deferred dependent on whether the implementation of IFRS 17 (the international equivalent) is deferred).

APRA has issued an indicative timeline which provides that initial consultation/scoping of AASB 17 issues that may require prudential framework change will occur in Q3 2018-Q2 2019 with initial formal consultation on principles for aligning the prudential framework to AASB and any LAGIC changes occurring in Q3 2019. Final prudential standards are expected to be released by Q1 2021.

[Source: APRA Letter to Industry: 16/11/2018]

Minimum capital requirements may increase for private health insurers? APRA review of the capital standards for private health insurers

The Australian Prudential Regulation Authority (APRA) has outlined its planned approach to reviewing the capital framework applicable to private health insurers (PHIs). APRA states that the 'primary goal in undertaking the review is to ensure that the capital standards for private health insurers provide for an appropriate level of financial resilience' so that policyholders are protected and that this will inform APRA's approach to the review.

Scope of the review

The review will examine whether the minimum capital requirements sufficiently support PHI resilience and also consider more closely aligning the existing framework to the capital framework used by life and general insurers.

More particularly, APRA intends that the review will cover both:

- *Prudential Standard HPS 100 Solvency* (HPS 100): The review will consider the ongoing need for a quantitative liquidity standard for private health insurers
- *Prudential Standard HPS 110 Capital Adequacy* (HPS 110): The review will cover all aspects of the calculation of required capital and the capital base. It will also cover reporting to APRA as it relates to capital adequacy and solvency, disclosure requirements relating to capital adequacy and solvency, and requirements around capital management policy (in LAGIC terminology, the Internal Capital Adequacy Assessment Process, or ICAAP).

Possible increase in capital requirements?

In a statement, APRA Executive Board Member Geoff Summerhayes said:

- capital levels in PHIs are considered to be broadly appropriate, and do not need to be reduced.
- the review 'may conclude that minimum regulatory capital requirements should be lifted to better reflect the risks faced by the industry' but that 'many insurers already have sufficient holdings to absorb an increase without the need to raise additional capital'
- he considers any changes to the capital framework are unlikely to 'materially affect premiums' as historically claims costs rather than capital levels have been the primary diver of health insurance premium rises.

Timeline for completion: APRA states that it will shortly (Q4 2018-Q1 2019) commence consulting with industry and other stakeholders ahead of releasing a discussion paper on potential revisions to the capital framework towards the middle (Q2) of 2019. The review is expected to be finalised, by the end of 2020 with transition arrangements put in place to assist PHIs to adjust to the new framework.

Broader context

- The review of the capital framework for private health insurance (PHI) is the final phase of APRA’s PHI Roadmap, launched in 2016 shortly after APRA took over regulatory responsibility for the sector from the Private Health Insurance Administration Council (PHIAC). Phase One, focused on risk management, took effect from April this year, while Phase Two, aimed at lifting standards of governance and decision-making, was finalised in September and comes into force from 1 July next year.

- APRA notes that it is currently considering how to integrate AASB 17 Insurance Contracts into the capital framework (commonly referred to as the Life and General Insurance Capital, or LAGIC, framework), and to make any necessary updates and refinements to the LAGIC framework in light of experience since its commencement in 2013. This will also need to be taken into account in the PHI capital review. Consequently, APRA notes that the timeframes for the PHI capital review have some dependency on implementation of AASB 17. In preparation for the review, APRA encourages private health insurers to familiarise themselves with the LAGIC framework.

[Sources: Speech by Peter Kohlhagen, APRA Senior Manager, Policy Development at the Private Healthcare Australia conference: Resilience, capital and culture: building defenses against the rising tide 16/11/2018]

Overseas Developments

In Brief | Streamlined oversight of Canadian financial markets? The Supreme Court of Canada has unanimously upheld the constitutionality of a proposal to implement a national cooperative capital markets regulatory system to be overseen by a new regulator. Bloomberg writes that five provinces including Ontario, are supportive of the move, which is intended to streamline oversight of financial markets by replacing the existing patchwork of regulations.

[Sources: Reference re Pan-Canadian Securities Regulation 2018 SCC 48; Bloomberg 10/11/2018]

Corporate Social Responsibility and Sustainability

Corporate Human Rights Benchmark releases 2018 ranking of 101 companies on human rights performance

The Corporate Human Rights Benchmark (CHRB) 2018 assesses and ranks the human rights policies, processes and practices of 101 of the world's largest publicly traded companies in three 'high risk' sectors: apparel, agricultural products and mining sectors.

Some Key Points:

- The average overall score was low (27%) and more than a quarter of companies scored less than 10%. A particular area of weakness was human rights due diligence with 40% of companies scoring zero on the issue.
- Best performers (with scores above 60%) include: Adidas, Rio Tinto, BHP Billiton, Marks & Spencer Group, Unilever, Vale, ENI and VF, who all scored above 60%

[Sources: CHRB media release 12/11/2018; Corporate Human Rights Benchmark 2018 Results; Key Findings report]

In Brief | The CBA will reportedly source most of its power from renewable energy by next year and commit to 100% renewable energy by 2030 as part of broader a commitment to a low-carbon future. Reportedly, CBA executive general manager, group property, Jennifer Saiz said the move is not purely about being a good corporate citizen but is also a good financial one.

[Source: [registration required] The AFR 13/11/2018]

Financial Services

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission)

Ahead of the Financial Services Royal Commission's Round 7 (Policy) hearings, the Commission has released a background paper outlining the approaches taken in peer jurisdictions in relation to various issues including controls on remuneration.

Ahead of the last and final round of public hearings, Round 7 (Policy) Hearings (due to commence on 19 November) the Financial Services Royal Commission has released a background paper outlining the approach taken in peer jurisdictions — United Kingdom (UK), the Netherlands, New Zealand and the United States (US) — in relation to the issues of:

- controls on remuneration arrangements inside financial services firms (executive remuneration and variable remuneration)
- controls on remuneration in connection with financial advice and financial product sales and distribution (commissions and ongoing advice fees)
- laws requiring the separation of financial product sales from financial advice and addressing conflicts in the distribution of proprietary financial products
- financial product hawking and other forms of unsolicited sales practices, and
- regulators, including regulatory architecture, enforcement options and accountability.

[Source: Background Paper 30: Information About Selected Aspects Of Foreign Financial Services Regulation 14/11/2018]

The Senate Economics References Committee has released its report into the regulatory framework for the protection of consumers in the banking, insurance and financial services sector. Among other things, the Committee recommends that the Financial Services Royal Commission be granted additional time to report.

The Senate Economics References Committee has released its report into the regulatory framework for the protection of consumers in the banking, insurance and financial services sector. The inquiry has been conducted over the past two years (it was referred to the Committee on 29 November 2016).

The report includes a chapter providing an overview of the issues raised in evidence in relation to the consumer protection system and specific sectors of the banking, insurance and financial services industry that emerged over the course of the Committee's inquiry (some of which have also emerged over the course of the Financial Services Royal Commission hearings). These include issues in relation to: financial advice, conflicted remuneration arrangements and grandfathered commissions, mortgage brokers, fraudulent home loan applications and irresponsible lending, valuations and foreclosure, insurance, credit cards, consumer leases and payday loans as well as debt management firms, receivers, administrators and liquidators and engagement with Indigenous people (among others).

The report also includes a chapter (Chapter 5) outlining the work of the Royal Commission into the Banking, Superannuation and Financial Services Industry, the committee's conclusions, and recommendations arising from the inquiry. Given the ongoing work of the Financial Services Royal Commission, the report makes no specific policy recommendations but does state that the issues identified justify the establishment of the Commission, and that the Commission has 'reinforced the concerns expressed to the committee about enforcement in the financial sector'.

Ultimately, the Committee makes three recommendations:

1. That the Commonwealth Government give the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry an extension of time to report.
2. That the government provide a response to the Parliamentary Joint Committee on Corporations and Financial Services' inquiry into the impairment of customer loans.
3. That the government consider increased funding for community legal and financial counselling services dealing with victims of financial misconduct.

[Source: Senate Standing Committee on Economics: Consumer protection in the banking, insurance and financial sector Report 15/11/2018]

Other Developments

Top Story | Superannuation Reform Bills update: Assistant Treasurer Stuart Robert has confirmed the government's intention to push forward with superannuation reform Bills.

In his address to the Association of Superannuation Funds of Australia (ASFA) conference, Assistant Treasurer Stuart Robert observed that 'the momentum for change continues to build outside the halls of Parliament House' in relation to superannuation, and confirmed the government's intention to push forward with its superannuation reform agenda.

Mr Robert also called on industry to take responsibility for the misconduct heard by the Financial Services Royal Commission and for industry to use the Commission as a catalyst for change.

Superannuation reform package: Assistant Treasurer Stuart Robert said that the government intends to progress the following five Bills.

1. Protecting Your Superannuation Package

Mr Robert said that that the proposed reforms are in line with the Productivity Commission draft report recommendations and 'are consistent with or build on the momentum of the Voluntary Insurance in Superannuation Code of Practice'.

Changes to the Bill: Mr Robert said the government intends to make changes to the Bill to address stakeholder concerns concerning workers in 'dangerous occupations'. Mr Robert said that stakeholders had provided feedback that these workers are likely to benefit from default insurance in superannuation (as they 'may face barriers to accessing insurance elsewhere). In response, he said that the government will make available an exception to the opt-in changes for new members in prescribed 'dangerous occupations' eg police officers, truck drivers, farmers or concreters who are under 25 or have an active low balance account, where trustees elect to apply it.

Other proposed changes? Separately, The AFR reports that Labor has said it will push for default insurance policies to continue to cover physically demanding jobs (not just dangerous occupations as is proposed by the government). 'The government's proposed exemption is far too narrow, covering only "dangerous occupations" – we are worried about the thousands of Australians working in hospital lifting patients, moving boxes in supermarket warehouses and the young working families who would be left destitute without insurance' shadow treasurer Chris Bowen and opposition superannuation spokeswoman Claire O'Neil are quoted as stating. In addition, Labor is reportedly seeking further amendments including a requirement for the Tax Office to consolidate accounts more quickly than is currently proposed, and changes to ensure mothers on maternity leave are not deemed to have an inactive account.

Industry response? The AFR reports that REST has said the legislation would see more than 880,000 members lose automatic death, total and permanent disability and income protection insurance.

REST CEO Vicki Doyle is quoted as stating: 'The demographics, the economics and the health profiles of rural and regional areas compared to urban ones are vastly different," she said. "I don't think the policy development has considered these differences.'

Current status of this Bill? *Treasury Laws Amendment (Protecting Your Superannuation Package) Bill 2018* was introduced into the House of Representatives on 21 June and has reached second reading stage in the senate, the senate economics legislation committee having recommended that the Bill be passed on 13 August.

The Bill proposes to introduce a range of reforms intended to 'protect against the undue erosion of superannuation balances through excessive fees and inappropriate insurance arrangements' though (among other things): capping certain fees at 3% on low balance accounts; preventing trustees from providing opt-out insurance to new members aged under 25 years, to members with balances below $6000 and to members with inactive MySuper or choice accounts (unless a member has directed otherwise); requirinf the transfer of low balance accounts to the Commissioner of Taxation if an account related to a MySuper or choice product has been inactive for a continuous period of 13 months; and enabling the commissioner to consolidate those accounts (see: Governance News 11/05/2018; 25/06/2018).

2. Improving Accountability and Member Outcomes in Superannuation Bill No 1

Mr Robert said that given the 'compulsory nature of superannuation, it is critical that the superannuation industry is held to the highest standards of transparency and accountability' and that the need for the measures in the Improving Accountability and Member Outcomes in Superannuation No 1 and No 2 Bills had 'never been more apparent' than currently ie in the light of the 'revelations' coming out of the Royal Commission. He added that the reform measures included are in line with the Productivity Commission's draft recommendations.

Changes to Member Outcomes No 1 Bill? Mr Robert flagged a number of changes to the Bill in light of industry concerns/feedback. These include:

- **Extension of the outcomes test to choice products (rather than being limited to MySuper products)** The extended outcomes test will impose a new covenant on trustees which extends the current obligation on MySuper trustees to promote the financial interest of members to trustees of choice products as well.
- **Disclosure:** To clarify disclosure requirements and ensure they are consistent, changes will be made to 'put beyond doubt that the portfolio holdings disclosure applies to all choice products, even where there is a no investment option' and to 'make it clear that there was no carve-out for platform products' Mr Robert said.

Current status of the Bill: *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Bill 2017* was introduced into the Senate on 14 September 2017 and reached second reading stage (see: Governance News 02/08/2018).

[Note: The Bill was introduced with the *Superannuation Laws Amendment (Strengthening Trustee Arrangements) Bill 2017,* which has also not progressed past the Senate and was not referenced by Mr Robert in his speech.]

3. Improving Accountability and Member Outcomes in Superannuation Measures No 2

Mr Robert said that the Bill is significant because it would both 'extend choice of fund to more Australians and it will close loopholes letting some employers reduce their Superannuation Guarantee contributions for employees who choose to make salary sacrifice contributions'. The government does not propose to make any amendments to the Bill.

Current status of the Bill: *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017* was introduced into the House of Representatives on 14 September and passed the House on 23 October. The Bill is currently at second reading stage in the Senate.

4. Treasury Laws Amendment Bill No 4

Mr Robert said that the measures included in the Bill, will 'crack down on employers that fail to pay their workers their full Superannuation Guarantee (SG) entitlements' by giving the Australian Taxation Office (ATO) near real-time visibility of how much SG employees are owed and the contributions their superannuation funds actually receive. 'For the first time, the ATO will be able to seek court-ordered penalties in the most egregious cases of non-payment, including up to 12 months jail for employers who are repeatedly caught but fail to pay superannuation guarantee liabilities. To better inform employees, the ATO will also be able to tell all affected employees about their actions to recover unpaid super and will display contribution information using MyGov' Mr Robert said.

Current status of the Bill: Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 was introduced into the House of Representatives on 28 March and passed the House on 25 June. The Bill has made no further progress).

5. Superannuation Guarantee compliance measures – including the SG integrity package and the SG amnesty

Mr Robert also noted that the government has introduced a one-off, 12-month amnesty (for employers if they come forward before they are identified by the ATO's usual enforcement activity) to encourage them to selfcorrect historical SG non-compliance. Penalties will apply if employers fail to come forward. Mr Robert said that this would incentivise employers to address their historical SG debts and added that the measure is estimated to collect around $230m in unpaid super for 50,000 workers.

Current status of the Bill: Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018 was introduced into the House of Representatives on 24 May and passed the House on 20 June. It progressed to second reading stage in the senate on 25 June and has not progressed further to date.

Comments on the Financial Services Royal Commission

Noting that the Financial Services Royal Commission's Interim Report made no recommendations, and that therefore it was too early to 'start speculating' on what the government's response might be, Mr Robert called on industry to nevertheless take responsibility for the misconduct identified and use the Commission as a 'catalyst' for change. In particular, Mr Robert drew attention to the following 'overarching' issues:

- Pursuit of short term profit at the expense of duties to customers and 'basic standards of honesty and fair dealing.
- A sales culture, rather than a culture focused on good customer outcomes, which is driven by remuneration and incentive structures at all levels in firms and for intermediaries.
- Failure to identify misconduct and/or failure to punish it at all, or to ensure the consequences reflected the seriousness of the misconduct.
- Failure to adhere to the law.
- Mr Robert also said that 'Complexity of the law may be part of the problem, and simplification may be part of the solution' but added that 'The financial sector must take responsibility for the misconduct heard by the Commission. Primary responsibility for misconduct lies with financial firms, their boards and senior executive teams'.

[Source: Assistant Treasurer Stuart Robert Address to the Association of Superannuation Funds of Australia (ASFA) Conference, Adelaide 14/11/2018; [registration required] The AFR 14/11/2018]

The CDPP and the Federal Court to receive additional funding: The Treasurer has announced $51.5m in additional funding for the prosecution of misconduct by financial institutions expected to arise from ASIC's increased enforcement activity

Treasurer Josh Frydenberg has announced an additional $51.5 million for the Commonwealth Director of Public Prosecutions (CDPP) and the Federal Court of Australia in anticipation of the additional prosecutions expected to arise from the Australian Securities and Investments Commission's (ASIC's) increased enforcement activity.

Further detail

- $41.6 million (of the total $51.5m) will be provided to the CDPP over eight years to enable it to hire additional prosecutors to manage the anticipated increased caseload. This is expected to both enable the CDPP to consider more prosecutions put forward by ASIC and to increase the speed at which they are dealt with.
- $9.9 million (of the total $51.5m) will be provided to the Federal Court of Australia over four years to fund the appointment of additional resources including two new judges to support civil cases. The Treasurer said that the new appointments would increase the capacity of the court to deal with the increase in disputes with financial institutions as well as civil claims resulting from ASIC’s increased enforcement activity.

Expansion of the Federal Court's jurisdiction to include corporate crime? In addition, the Treasurer said that the Attorney-General's Department (AGD) has been tasked with conducting a review of whether the Federal Court’s criminal jurisdiction should be expanded to include corporate crime. This would allow, the Treasurer said, these 'prosecutions to be prioritised and penalties for breaches of the law to be handed out faster'. The AGD will consult with relevant stakeholders (including the states) and provide its report to the Government in January 2019.

New Committee of Regulatory Enforcement Strategy: The Treasurer also announced that the government will establish a new Committee of Regulatory Enforcement Strategy chaired by the AGD. The committee will include representatives from relevant financial regulators and will meet on a regular basis to discuss enforcement matters in the sector and provide feedback to the government on regulatory and civil enforcement policy.

[Source: Treasurer Josh Frydenberg media release 16/11/2018]

Draft Life Insurance Code released for consultation: The FSC is consulting on a revised code of conduct for life insurers. Consultation will close 12 January 2019. The proposed commencement date for the new code is 1 July 2019.

The Financial Services Council (FSC) has released what it describes as a 'radical overhaul' of the FSC Life Insurance Code (Code) for public consultation. The revised Code is designed, the FSC states, to lift standards in product design, sales, underwriting, customer service, complaints and claims handling.

Some Key Points

Application of the Code

- The Life Insurance Code of Practice is mandatory for all FSC member life insurers.
- Among the proposed changes released for consultation is the proposal to extend coverage of the Code to include all life insurance distributors and to 'bind trustees of superannuation funds' to the Code.

Enforcement

- The Code is enforced by the independent Life Code Compliance Committee, which is administered by the new consumer complaints body, the Australian Financial Complaints Authority (AFCA).
- The FSC indicated that it intends to register the code with ASIC but gave no further detail on the timeframe or progress towards this.

Proposed changes

Proposed changes to the new Code include the following.

- Banning pressure selling of products and coercive retention tactics.
- Banning medical disclosure checking without reasonable grounds.
- Ensuring customers are no better or worse off at claim time (excluding fraud).
- Improving Funeral insurance to ensure people understand what they are buying: The new guidelines extend cooling off periods, require insurers to better explain premium increases, and not to market to people who will not benefit from it.
- Separating Consumer Credit Insurance (CCI) from credit product sales.

Commenting on the proposed changes, FSC CEO Sally Loane said: 'Every aspect of the life insurance industry is under the microscope following the poor behaviour brought to light during the Royal Commission…We owe it to consumers to do a better job. Today with the release of the consultation draft of the second iteration of the Code the life insurance industry is demonstrating it is serious about improving products, practices and governance to rebuild the standing of the sector.'

Timing/implementation

- The draft Code will be open for consultation until 12 January 2019.
- It's proposed that the Chapter 1 apply from July 2019 and Chapter 2 by 30 June 2021.
- The Code will be independently reviewed every three years from 2022.

[Sources: FSC media release 12/11/2019; Consultation Draft: Life Insurance Code of Practice; [registration required] The Australian 12/11/2018; [registration required] The AFR 12/11/2018;

Update ASIC responsible lending enforcement action: Westpac's $35m responsible lending law settlement with ASIC has been rejected by the Federal Court for lack of specificity

Context: In September, The Australian Securities and Investments Commission (ASIC) issued a statement announcing that Westpac had admitted to breaching its responsible lending obligations under the *National Consumer Credit Protection Act 2009 (Cth)* (the National Credit Act) and has agreed to a $35 million civil penalty to settle ASIC Federal Court Proceedings. The litigation related to Westpac's home loan assessment process during the period December 2014 and March 2015 and more particularly to Westpac's use of the Household Expenditure Measure (HEM) figure rather than customer's declared living expenses to assess customers' capacity to repay loans in certain cases. The proposed settlement was subject to Federal Court approval.

Federal Court has rejected the settlement

The Federal Court has rejected Westpac/ASIC's joint application to settle the proceedings on the basis that the agreed facts were insufficient to assess whether there had been a breach of the law, and this being the case, that there was insufficient material provided for the court to determine the appropriateness (or otherwise) of the agreed penalty.

Justice Perram writes: 'I do not propose to make the declaration sought. I simply do not accept that the conduct specified in the declaration is conduct, which could possibly be a contravention of s 128. I will not declare conduct, which is not unlawful to be unlawful. The contraventions of s 128, that is the entry into credit contracts, must be specified. The declaration tells one next to nothing. It could describe a bank which made 2 loans, 50,000 loans or, significantly, no loans at all. The parties' side agreement about the 5,041 loans as set out in the proposed notation does not form part of the declaration and does not solve that problem. Correspondingly, the declaration does not provide any information about when the use of the HEM Benchmark instead of the customers' declared living expenses is permitted and when it is not. As the parties plainly intended, this is precisely the question the declaration does not answer'.

He went on to say, 'It will be apparent given all of this uncertainty that, even if the proposed declarations were made by consent, it is also quite impossible to address the appropriateness of the suggested penalty. The parties have placed no material before the Court on the joint application revealing why the Respondent decided to use the HEM Benchmark in preference to customers' declared living expenses… It is unworkable to assess the reasonableness of the penalty if it is not known what is to be penalised'.

Next steps? The parties will return to the court for directions on November 27. ASIC is reportedly 'reviewing the judgment' and indicated that it does not intend to make any further comment at this time.

[Sources: Australian Securities & Investments Commission v Westpac Banking Corporation [2018] FCA 1733; [registration required] The AFR 13/11/2018; 13/11/2018; The ABC 13/11/2018]

The government has announced the creation of a $2 billion Australian Business Securitisation Fund intended to increase access tom and lower the cost of, funding for small businesses

In a joint media release, Treasurer Josh Frydenberg and Minister for small business, skills and vocational education Michaelia Cash have announced a new initiative aimed at improving access to funds, and the cost of funding, to small business: the Australian Business Securitisation Fund. The fund will invest up to $2 billion in the securitisation market, providing significant additional funding to smaller banks and non-bank lenders to on-lend to small businesses on more competitive terms.

The fund will be administered by the Australian Office of Financial Management (AOFM), consistent with their prior involvement in the Residential Mortgage Backed Securities Market in 2008.

The government is also in consultation with the Australian Prudential Regulation Authority (APRA) and a number of financial institutions in regard to the establishment of an Australian Business Growth Fund that would provide longer term equity funding to small businesses. To fast track its establishment, the Government will host a meeting of key stakeholders in Canberra during the next sitting period.

The Australian Business Growth Fund is expected to follow similar international precedents (eg the UK's Business Growth fund).

[Source: Treasurer Josh Frydenberg and Minister for Small and Family Business, Skills and Vocational Education media release 14/11/2018]

Update on the senate inquiry into provision of credit to vulnerable customers: CALC's submission to the Senate Inquiry into credit and financial services targeted at Australians at risk of financial hardship calls for immediate law reform to address consumer harm

On 17 October 2018, the Senate referred an inquiry into 'credit and financial services targeted at Australians at risk of financial hardship' to the Senate Economics References Committee for inquiry and report by 22 February 2019. Submissions closed on 9 November 2018.

Terms of Reference

The Committee considered the following.

- The impact of payday lenders and consumer lease providers; unlicensed financial service providers including 'buy now, pay later' providers and short term credit providers, debt management firms, debt negotiators, credit repair agencies and personal budgeting services on individuals, communities and the broader financial system.
- The question of whether current regulation of these service providers meets community standards and expectations and whether reform is needed to address harm being caused to consumers.
- The current capacity and capability of the financial counselling sector to meet the need for their services.
- 'Any other matters'.

Consumer Action Law Centre (CALC) submission

The CALC submission to the inquiry argues that the 'scandals in financial advice, examined by the Banking Royal Commission, have parallels in the debt advice industry' with the key difference that there is 'even less scrutiny and regulation of debt advice'. More particularly, the submission argues that the community expects that companies that supply 'credit' in its simple sense ('companies fronting money to people who can't afford to pay at the time of purchase) should be subject to the same obligations as other credit providers. 'There is no principled reason why providers like AfterPay, ZipPay, Certegy, Cigno, pawnbrokers and others should get a carve out from consumer credit regulation, which include basic but important obligations like: assessing the suitability of loans including affordability of repayments so that people (particularly younger people) are not set up to fail; providing hardship assistance; and compulsory membership of AFCA to resolve customer complaints' the submission states.

The submission argues on this basis for urgent regulatory reforms to address the harm caused to consumers and for additional funding for community services (eg counselling services and legal services) noting that currently supply is outstripping demand.

The submission makes ten recommendations. These include the following.

- The urgent passage of the *National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018 (Cth)*.

[Note: This Bill was introduced into the House of Representatives on 26 February 2018 but is not proceeding. The Bill sought to create a number of offences and civil penalty provisions relating to small amount consumer contracts (payday loans) and to consumer leases for household goods (rent-to-buy arrangements). However, concerns were raised, among other things, over the fact that significant elements of these offences and civil penalty provisions (including threshold amounts, conditions and the persons to which the offence or civil penalty applies) were left to regulations and/other delegated legislation. See: Standing Committee for the Scrutiny of Bills Scrutiny Digest 3 of 2018]

- Prevent consumer lease providers from accessing Centrepay (ie accessing customers' Centrelink payments directly).
- The extension of the *National Consumer Credit Protection Act 2009 (Cth)* (National Credit Act) to cover Buy Now Pay Later (BNPL) providers, short-term credit providers, and pawnbrokers.

- The extension of the (proposed) Product Intervention Powers and Design and Distribution Obligations regime to cover buy no pay later providers, short term credit providers, pawn brokers, debt advice, debt management and credit repair.
- The introduction of a 'robust regulatory framework for all debt management and credit repair firms', whether by extending the National Credit Act or introducing stand-alone legislation. Such regime should include (among other things): the imposition of a duty to act in client's best interests, a ban on upfront fees and charges, compulsory membership of the Australian Financial Complaints Authority (AFCA) and licensing and authorisation by ASIC.
- Increased funding for financial counselling and community legal services as proposed in the joint submission by Financial Counselling Australia and the National Association of Community Legal Centres.

[Sources: CALC media release 12/11/2018; CALC submission to the senate standing committee on economics 09/11/2018; Senate Inquiry into the Credit and Financial Services Targeted at Australians at Risk of Financial Hardship Terms of Reference; Submissions; [registration required] The AFR 11/11/2018]

Successful NDIS blockchain payments trial a strong indication that the technology could potentially be used in future to streamline/improve the payment process?

The Australian reports that the Commonwealth Bank of Australia (CBA) and CSIRO's Data61 have successfully trialled a prototype blockchain enabled 'smart money' app with some National Disability Insurance Scheme (NDIS) participants. The trial found that the technology could (in future) deliver greater choice and control to recipients of NDIS payments over their disability support services and also reduce administration costs (among other benefits).

CBA head of government and ADIs Julie Hunter is quoted in the article as suggesting that the trial is an indication that the technology could have wider application 'across the government, business and not-for-profit sectors.' Reportedly, the overall economic benefits of 'smart money' technology would equate to hundreds of millions of dollars annually, if the proof of concept was developed and implemented as part of a full-scale solution across Australia (though further research and time would be needed to translate the pilot project into a broader solution) according to CBA's modelling.

[Source: [registration required] The Australian 13/11/2018]

Overseas Developments

United States | Know your customer? US banks are reportedly looking at ways to access government databases at state departments of motor vehicles and other government offices to make sure potential customers are who they say they are.

The WSJ reports that, to better combat the risk of identity scams and in a bid to contain the escalating costs of carrying out identity verification themselves (estimated $6bn annually set to increase to $10bn by 2021), US banks including JPMorgan Chase & Co, Bank of America Corp, Wells Fargo & Co and Citigroup are looking for ways to access/link to US government databases such as the department of motor vehicles (DMV). It's envisaged that the banks would pay a fee for being able to access the database (and thereby immediately verify the identity) of a bank customer.

The lenders are reportedly pushing state and federal agencies to assist in their efforts to streamline the identity verification process and have formed a coalition — the Better Identity Coalition — to do so.

The WSJ suggests that were it implemented, the fees from such a service could provide a means for government agencies like the DMV to preserve their role as 'identity gateways' (given fewer people are driving) as well as fund the costs of necessary technology upgrades.

[Source: [registration required] The WSJ 12/11/2018]

United States | Proposed loosening of financial regulation in doubt following the mid-term US elections?

CNBC reports that Democrat Maxine Waters (who is expected to take over as Chair of the House Financial Services Committee replacing Republican Jeb Hensarling) has reportedly said that the Trump administration's efforts to roll back Dodd-Frank banking reforms 'won't stand' when the new Congress convenes in January. 'Make no mistake, come January…the days of this committee [the House Financial Services Committee] weakening regulations and putting our economy once again at risk of another financial crisis will come to an end' she reportedly said. More particularly, Ms Waters expressed concern about proposals to reduce capital and liquidity requirements for the largest financial institutions which she said 'would weaken strong safeguards established by Dodd-Frank to protect the US economy from another costly financial crisis'.

[Source: CNBC 14/11/2018]

In Brief | The FT reports that Olli Rehn, governor of Finland's central bank and a member of the European Central Bank's governing council, has said that European financial regulators are discussing whether to supervise big technology companies more closely in response to recent moves into financial services by groups such as Amazon and Google.

[Source: [registration required] The FT 12/11/2018]

Accounting and Audit

United Kingdom | The FRC has announced 2019/20 audit thematic reviews, priority sectors and audit areas of focus.

The UK Financial Reporting Council (FRC) has announced it will supplement its routine monitoring in 2019/2020 with two thematic reviews. The additional reviews will focus on aspects of audit practice across a number of firms to identify both scope for improvement and good practice to drive improvements in audit quality.

The thematic review topics are:

1. **The development and use of Audit Quality Indicators (AQIs) in audit firms.** The FRC notes that this review commenced during the 2018/19 inspection program and will be delivered in 2019/20.
2. **The use of technology in audits.** The FRC reported on firms' use of data analytics in 2017. This review will assess the progress that the firms have made since, how the use of technology has widened beyond data analytics and the potential impact upon audit quality

The FRC will publish its 2018/19 thematic review of 'The Auditors Work on Other Information in the Annual Report' later in 2018, followed by a report on Audit Firm Transparency Reporting in the first quarter of 2019.

Priority Sectors (those assessed as high risk): Financial Services, with emphasis on banks, other lenders and insurers; Oil and Gas (CRR only); General Retailers; and Retail Property; Business Support Services; and Construction and Materials.

Particular Areas of Focus

As part of our audit monitoring program for 2019/20 the FRC will focus on the following:

- Going concern and the viability statement
- The 'Other Information' in the Annual Report
- Long-term contracts
- The impairment of non-financial assets

The FRC states that it will also consider the potential impact of Brexit, in both the selection of audits to review, and the individual areas of audit work to focus on.

[Source: FRC media release 15/11/2018]

Risk Management

Cybersecurity

New global cyber-risk initiative: The Paris Call for Trust and Security in Cyberspace was launched on 12 November with the aim of developing a system of tighter regulation of global technology companies.

In a recent speech at the UNESCO Internet Governance Forum, French President Emmanuel Macron launched a new initiative — the 'Paris Call for Trust and Security in Cyberspace' (the Paris call) — which aims to develop a system of tighter regulation of global technology companies. More particularly, signatories to the initiative agree to work together to address a number of specific issues. These include (among others) issues in relation to: intellectual property (eg addressing theft of trade secrets), terrorism and protection of democracy (eg interference by foreign actors in election processes). In addition the group agrees to working to 'promote the widespread acceptance and implementation of international norms of responsible behaviour' and to 'confidence-building measures in cyberspace'.

The initiative has already received the backing of a number of states, companies and other agencies/organisations including a number of large technology companies such as Google, Microsoft, and Facebook. At this stage, Amazon, China and Russia are not signatories and according to media reports, the US may also not sign on. Australia is also not a signatory.

President Macron also reportedly announced a new pilot initiative which will involve French government officials, attending Facebook company premises, to enable them to monitor first-hand how the company identifies and removes certain kinds of illicit content (including content deemed 'hate speech'). The pilot is reportedly scheduled to commence in January.

[Note: The 'Paris Call' appears to share some common ground with the 'Contract for the Web' initiative recently launched by web founder Tim Berners-Lee. See: Governance News 12/11/2018.]

[Sources: Paris Call for Trust and Security in Cyberspace: media release 12/11/2018; Full text of the Paris Call for Trust and Security in Cyberspace; List of signatories; Reuters 12/11/2018; ITNews 13/11/2018; [registration required] The FT 13/11/2018; [registration required] The WSJ 12/11/2018; The Washington Post 12/11/2018; Fortune 12/11/2018]

Global Commission on the Stability of Cyberspace (GCSC) has introduced six new 'norms' to promote 'the peaceful use of cyberspace'

The Global Commission on the Stability of Cyberspace (GCSC) has released its new Norm Package which includes six new global norms to help 'promote the peaceful use of cyberspace' and the stability of the web. GCSC writes that the norms were developed with the express purpose of being adopted by public and private sector actors and build on previous norms introduced by the GCSC concerning the disruption of elections through cyber attacks on electoral infrastructure and a Call to Protect the Public Core of the Internet.

The new norms introduced by the GCSC focus on the following areas:

1. Norm to Avoid Tampering
2. Norm Against Commandeering of ICT Devices into Botnets
3. Norm for States to Create a Vulnerability Equities Process
4. Norm to Reduce and Mitigate Significant Vulnerabilities
5. Norm on Basic Cyber Hygiene as Foundational Defense
6. Norm Against Offensive Cyber Operations by Non-State Actors

[Sources: GCSC media release 08/11/2018; ITNews 09/11/2018; Global Commission on the stability of cyberspace: Norm Package Singapore November 2018]

Climate Risk

In Brief | The AFR reports that 16 of the world's biggest insurers, including IAG and QBE, have launched an initiative with the United Nations to develop new risk assessment tools to better respond to the impacts of climate change. Though the initiative is aimed at responding to, rather than preventing climate change, limiting global warming is viewed as important to safeguarding the future of the insurance industry. IAG has reportedly said that failure to reduce greenhouse gas emissions could result in a world that is 'pretty much uninsurable', with poorer communities likely to bear the brunt of the effects.

[Source: [registration required] The AFR 15/11/2018]

Other Developments

In Brief | The WSJ reports that Wells Fargo has ended its investigation into alleged gender bias in its wealth management unit having concluded that 'there is unequivocally no gender bias' in the division. The WSJ comments that the allegations and subsequent investigation are an indication of the extent to which the #MeToo movement has become integrated into a broader discussion about whether women are being fairly promoted into senior roles in a variety of industries, including finance.

[Sources: [registration required] The WSJ 09/11/2018]

Restructuring and Insolvency

ASIC has released its annual report on corporate insolvencies 2017-2018: Small to medium size corporate insolvencies 'dominate external administrators' reports' ASIC found.

The Australian Securities and Investments Commission (ASIC) has released its annual overview of corporate insolvencies based on statutory reports lodged by external administrators for the 2017–18 financial year: *Report 596 Insolvency statistics: External administrators' reports (July 2017 to June 2018)* (REP 596).

Scope of the report: The report provides an overview of total lodgements of statutory reports lodged by liquidators, receivers and voluntary administrators (external administrators) from 1 July 2017 to 30 June 2018, as well as statistical findings from external administrators' reports lodged electronically when a company enters external administration (EXAD) status (initial external administrators' reports).

Some Key points

- The total number of external administrators' reports lodged decreased from 8,425 in 2016–17 to 8,202 in 2017–18. The percentage of electronically lodged reports for 2017–18 increased to 99.9%, compared with 36.8% in 2002–03 (when electronic lodgement first became available).
- Small to medium size corporate insolvencies 'dominate external administrators' reports' ASIC writes. ASIC notes that 84% had assets of $100,000 or less and 39% of failed companies had estimated liabilities of $250,000 or less. 78% had fewer than 20 employees.
- 97% of unsecured creditors received between 0–11 cents in the dollar, reflecting the asset/liability profile of small to medium-size corporate insolvencies.
- The industries with the most lodgments were: Other (business and personal) services (28% if external administrators' reports) followed by construction (22%) and Accommodation and food services (14%). These industries have been the top three since 2015-2016.
- The top 3 nominated causes of failure were: Inadequate cash flow or high case use (49% of reports), poor strategic management of the business (46% of reports) and trading losses (39%).
- The top 3 forms of alleged possible misconduct were: insolvent trading (s588G(1)-(2) *Corporations Act 2001 (Cth)*); alleged breach of directors' and officers' duties of care and diligence (s180); and obligation to keep financial records (s286 and s344(1)).

- Reports lodged more than two months and less than six months after appointment increased from 44% in 2016/17 to 54.7% of reports lodged in 2017/18. Reports lodged more than six months after appointment fell from 43.5% in 2016/17 to 32.7% in 2017/18. ASIC attributes the improvement in lodgement time periods to new three-monthly reporting requirements for creditor voluntary liquidations introduced by the *Insolvency Law Reform Act 2016* and the introduction of ASIC's Industry Funding Model in 2017.
- ASIC requested 897 supplementary reports from external administrators in 2017–18.
- External administrators advised ASIC that they had either commenced or were contemplating initiating recovery actions for insolvent trading for 1,987 reports, compared to 5,265 reports alleging a civil breach for insolvent training.

[Sources: ASIC media release 14/11/2018; Report 596 Insolvency statistics: External administrators' reports (July 2017 to June 2018)]

In Brief | The World Bank Insolvency Rankings: Japan is ranked 1st, Finland is 2nd and the US is 3rd in the World Bank Insolvency Rankings. The UK remains ranked 14th and Australia is 20th.

[Sources: World Bank: Doing Business – measuring business regulations]

Other News

A draft Brexit deal? A provisional treaty has been agreed between the UK and Brussels and has been approved by the UK cabinet, but media reports suggest it is ultimately unlikely to go forward given the apparent political uncertainty/lack of support in the UK

A provisional Brexit deal has been agreed between London and Brussels and has reportedly been approved by the UK cabinet. However, it remains to be approved by an EU summit, the House of Commons and the European Parliament (which is required before it comes into force).

Some Key Points

According to the FT report (republished by The AFR), the draft includes the following.

- A transitional period (which can be extended by mutual agreement for an unspecified one-off period) would be in place until 2020. During this period, Britain will continue to apply EU law in full (including EU free movement rules).
- During the transitional period, Britain will withdraw from EU political institutions and have no say over rules/decisions.
- The agreement maintains the existing EU residence and social security rights of more than 3m EU citizens in the UK, and about 1m UK nationals living on the continent.
- During the transitional period, it's contemplated that negotiations on a future UK-EU trade agreement begin.
- The agreement reportedly includes 'backstop' arrangements for the Irish border to ensure the free circulation of goods across the island of Ireland. These would remain in place unless and until a separate EU-UK agreement replaces them.
- The UK will pay into EU budgets for 2019 and 2020 as if it were still a member of the EU. It will subsequently 'contribute its share of the financing' for any outstanding EU liabilities as they fall due. While most of the contributions will be made by 2025, some payments could continue until 2064, notably towards the pensions of EU officials.

Deal in doubt? According to media reports, two cabinet members, including the Brexit chief negotiator, have resigned on the basis that they are unable to support the deal, casting doubt on whether it will go forward. Prime Minister Theresa May's leadership is also reportedly in question, with some media commentators suggesting she may face a vote of no confidence, though Ms May has reportedly said she intends to see the deal through. The BBC quotes German Chancellor Angela Merkel as commenting that it is still possible that Britain may exit the EU without a deal.

[Sources: Draft Agreement: TF50 (2018) 55 — Commission EU27 14/11/2018; Declaration on the future relationship between the EU and the UK; [registration required] The FT 16/11/2018; 14/11/2018; [registration required] The AFR 15/11/2018; The Conversation 15/11/2018; BBC 16/11/2018; News.com.au 16/11/2018; The ABC 16/11/2018; The SMH 16/11/2018; Investment Week 15/11/2018; 15/11/2018]