



Governance News

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

17 March 2021

Contents

Boards and Directors	4
DIN regime: Treasury is consulting on a draft data standard and draft disclosure framework to support the implementation of the director identification number regime	4
Global CEO survey finds cyber risk and climate risk have risen up the list of CEO priorities	5
Rosy view: Business Roundtable survey finds CEOs are optimistic about the US economic outlook	6
Meetings and Proxy Advisers	7
Top Story Getting closer? Senate Committee green lights proposed changes to continuous disclosure and meeting requirements	7
Support for a hybrid format: ACSI is broadly supportive of the government's proposed approach to the modernisation of meeting requirements	9
Semler Brossy finds that more shareholder ESG resolutions than ever are receiving 50% or more support, despite the pandemic	10
Shareholder Activism	11
SEC sides with Exxon to block two shareholder resolutions, denies Exxon's request to block a further two	11
Transition commitment: Shareholder resolution withdrawn at HSBC following engagement	12
Shareholder climate lobbying resolution filed at Rio Tinto (again)	13
Successful engagement: Valero has agreed to introduce ESG metrics into executive pay plans in response to a shareholder resolution	14
In Brief 'Say on Climate': Santos has announced that following consultation with shareholders, it will provide shareholders with a non-binding advisory vote on the company's Climate Change Report at the 2022 Annual General Meeting. The ACCR, which has filed a shareholder resolution at the company seeking an annual say on climate, has welcomed the announcement and flagged it's intention to 'continue to engage with the company over the coming weeks about a recurring annual vote beyond 2022'	14
Institutional Investors and Stewardship	15
DOL to 'revisit' Trump-era ESG rules and will not enforce compliance, ISS has welcomed the statement	15
ACSI has pledged support for the Uluru statement from the heart	16
Financial Services	17
Top Story Changes to responsible lending on the way?	17
Responsible lending: Consumer group CHOICE has reiterated concerns about the possible rollback of responsible lending laws and welcomed the deferral of debate on the Bill	17
Compliance with the General Insurance Code of Practice: Code Compliance Committee reports a 5% uptick in the number of reported breaches in FY2019-20	18
Hayne implementation: ASIC is consulting on its proposed approach to implementing the deferred sales model for add on insurance ahead of the 5 October commencement date	22
Hayne implementation: Consultation on breach reporting regulations	23
End of LIBOR dates confirmed: The FCA and BoE have urged market participants to complete their LIBOR transition plans	23
APRA releases draft reporting standards for data collection in National Claims and Policies Database	24



In Brief Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 has passed both houses	24
In Brief ALRC Financial Services Legislation Inquiry: The Australian Law Reform Commission has welcomed the appointment of Perth based Federal Court judge the Hon Justice Craig Colvin as a part-time Commissioner for the review of the legislative framework for corporations and financial services regulation.....	24
In Brief The case against rolling back responsible lending laws: Members of a consortium of 12 academics who conducted an in-depth analysis of the proposed changes have outlined why they believe the changes should not be progressed	24
Risk Management	25
ESG.....	25
Fortescue sets 2030 target for carbon neutrality.....	25
In Brief Inevitable transition? Energy Australia has brought forward the closure of the coal-fired Yallourn power station from 2032 to mid-2028 as part of its strategy to be carbon neutral by 2050. The ACCR has welcomed the commitment as a 'sign of the times' and called on other energy providers to fast-track closure dates	26
In Brief The Climate Council has issued a statement calling on the government to rethink Australia's current climate policy including setting tougher emissions reduction targets and a plan to achieve them, in light of the decision of the European Parliament to introduce a carbon levy against high polluting nations	26
Cybersecurity, Technology and Privacy	26
Ransomware threat: Government report reminds directors of their existing duty to ensure appropriate oversight of cyber risk.....	26
Australia's cybersecurity strategy: What is our approach to reconciling developing our cyber offensive capability while also protecting vulnerable businesses?	28
Breaking the grip of default settings? As part of its digital platforms inquiry, the ACCC is seeking feedback on the impact of default settings on consumer choice/competition.....	28
In Brief Regtech in the context of whistleblowing: Flinders academic Vivienne Brand has written a paper discussing the possible application of AI in the context of corporate whistleblowing including considering whether 'whistlebots' could replace human whistleblowers and the possible advantages and disadvantages of such a development. Among other things, Professor Brand asks: 'Will a whistlebot be a more effective teller of truth than the human whistleblowers we are coming to rely on in modern corporate regulatory systems, free of anxiety as to the emotional consequences?'	29
In Brief Deloitte report into global trends in technology, media and communications predicts growth in digital reality, virtual doctor visits, cloud, and sports tech will continue to intensify, fuelled by the pandemic	29
Other Developments.....	29
Aged Care Royal Commission's Final Report Implications and impact	29
Other News	30
Bill to prohibit 'all sexual harassment' introduced into the House	30
Race Commissioner calls for a new national framework to address the resurgence of racism in Australia	30
Productivity Commission Review into supply chain vulnerabilities extended to July 2021	31

Boards and Directors

DIN regime: Treasury is consulting on a draft data standard and draft disclosure framework to support the implementation of the director identification number regime

DIN regime

The package of legislation that will introduce a new director identification number (DIN) requirement, and centralise and streamline access to business registers passed both houses on 12 June 2020 without amendment. You can find a summary of the changes [here](#).

Treasury consultation

Treasury is consulting on a [draft data standard](#) and [draft disclosure framework](#) to support the commencement of the director identification number (DIN) regime.

- The proposed data standard sets out the information required to apply for a DIN as well as how the information will be collected, recorded, stored and used. The draft standard is [here](#). The draft explanatory statement is [here](#).
- The proposed disclosure framework outlines the circumstances in which the Registrar will be able to disclose DIN information to entities that do not fall into the definition of 'government entities' but which are 'part of the workings of government' – ie entities to which the Public Governance, Performance and Accountability Act 2013 (PGPA Act) applies (PGPA bodies), courts and tribunals.

PGPA bodies include: the Australian Securities and Investment Commission (ASIC); Australian Prudential Regulation Authority (APRA); Reserve Bank of Australia; Commonwealth Scientific and Industrial Research Organisation (CSIRO); Australian Institute of Health and Welfare (AIHW); Australian Postal Corporation; and Defence Housing Australia.

The proposed disclosure framework is [here](#). The draft explanatory statement is [here](#).

Next Steps

The deadline for submissions is 1 April 2021.

In the coming weeks, the Treasury plans to consult on draft legislative instruments relating to transitional application periods for directors to apply for a DIN.

[Source: Treasury media release 12/03/2021]



Global CEO survey finds cyber risk and climate risk have risen up the list of CEO priorities

Key Takeouts

- CEO confidence about the global economic outlook for the coming year is at record highs
- Cyber risk has risen up the list of CEO priorities ranking as the second top risk to revenue growth prospects (after pandemic/health crises)
- Climate risk ranks ninth in the list of top threats (up from eleventh spot in 2020)

PwC's has released the results of its [24th Annual CEO survey](#) tracking CEO views on the global economic outlook as well as their key priorities and perceived threats. The findings are based on a survey of 5,050 CEOs in 100 countries and territories conducted in January and February of 2021.

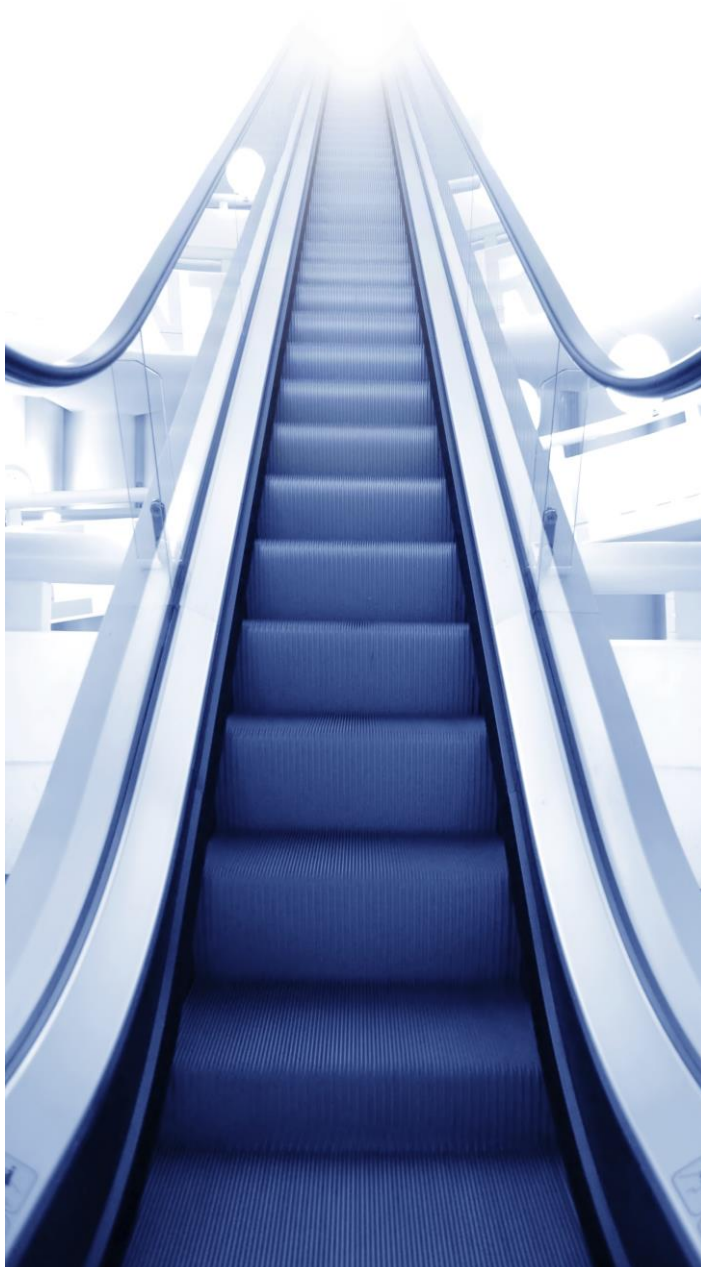
Some interesting findings

CEO confidence is at record highs

- Global economic outlook: 76% of CEOs surveyed believe that the economy will improve over the next 12 months (up from 22% last year and almost 20% higher than the previous 'high' for optimism in 2018 of 57%).
- Short term confidence levels:
 - 36% of CEOs surveyed said that they are 'very confident' about their own organisation's revenue growth prospects for the next year
 - 47% are 'very confident' looking ahead three years.
- Good indicator that the global economy is well on track to recovery:
 - PwC comments that analysis of CEO confidence levels has been found to be a good indicator of the direction and strength of global GDP.
 - Based on this year's responses, PwC predicts that global growth could rise as much as 5.0%. This could mean that the economy is on track to return to its pre-pandemic size by Q4 2021/early 2022.

Top five 'threats' to growth/prospects

- The top five threats were: 1) pandemics and other health crises (52%); 2) cyber threats (47%); 3) over regulation (42%); 4) policy uncertainty (38%); and 5) uncertain economic growth (35%).
- The level of concern has generally increased: PwC comments that the level of CEO concern about most threats has increased significantly (compared with the 2020 survey). For example: the top ranked threat in 2020 was over-regulation at 36%. Concern about the prospect of future pandemics and other health crises has gone from 9% six years ago (when the question was last asked) to 52% this year.



Climate change is now ranked in the list of top ten threats

- Climate change ranked 9th in the top threats list (30% of those surveyed identifying it as an extreme threat) up from 11th spot in 2020 (24%).
- PwC found that 43% of CEOs nominated environmental impact as the top area where they believe their business should be doing more reporting
- On the other hand:
 - 27% of CEOs report being 'not concerned at all' or 'not very concerned' about climate change.
 - 60% of CEOs have not yet factored climate change into their strategic risk management activities with companies located in countries with the highest risk exposure the least likely to have done so.

With the acceleration of digital adoption/transformation, cyber risk has risen up the list of priorities

- Though ranked as the second top threat overall, cyber risk ranked as the top threat for companies in North America and Western Europe.
- The spread of misinformation also ranks as a key concern with 28% of CEOs globally signalling that they are 'extremely concerned' up from 16% in the previous year).
- Increased productivity is a key focus: 36% of CEOs are focusing on increasing productivity through automation and technology (up 124% on 2016 levels).
- Increased investment:
 - 34% of those surveyed plan to increase their spend on digital transformation between 3% and 9%
 - Nearly half (49%) of CEOs plan increases of 10% or more in their long-term investment in digital transformation. Of this group, just under half are also planning to boost their spending on cybersecurity and data privacy by 10% or more.

[Source: PwC 24th Annual CEO Survey]

Rosy view: Business Roundtable survey finds CEOs are optimistic about the US economic outlook

Key Takeouts

- On every measure, the CEOs surveyed are optimistic about the outlook for the US economy
- 72% of those surveyed believe their company has already recovered/will have recovered by the end of 2021

The Business Roundtable' quarterly CEO Economic Outlook Surveys track CEO views on their company's expectations for sales and plans for capital spending and hiring over the next six months with a view to providing insights into the future direction of the US economy.

The [Q1 2021 survey](#) found that CEOs are felling optimistic:

- 87% of those surveyed expect their sales to grow in the next six months (up from 74% in the previous quarter)
- 57% expect their capital spending to increase over this same period (up from 47% in the previous period)
- 51% expect their company's US employment to increase in the next six months (up from 34% in the previous period)
- 72% believe conditions for their companies have already recovered or will have recovered by the end of 2021 (up from 67% in the previous quarter).

Business Roundtable CEO Joshua Bolten commented,

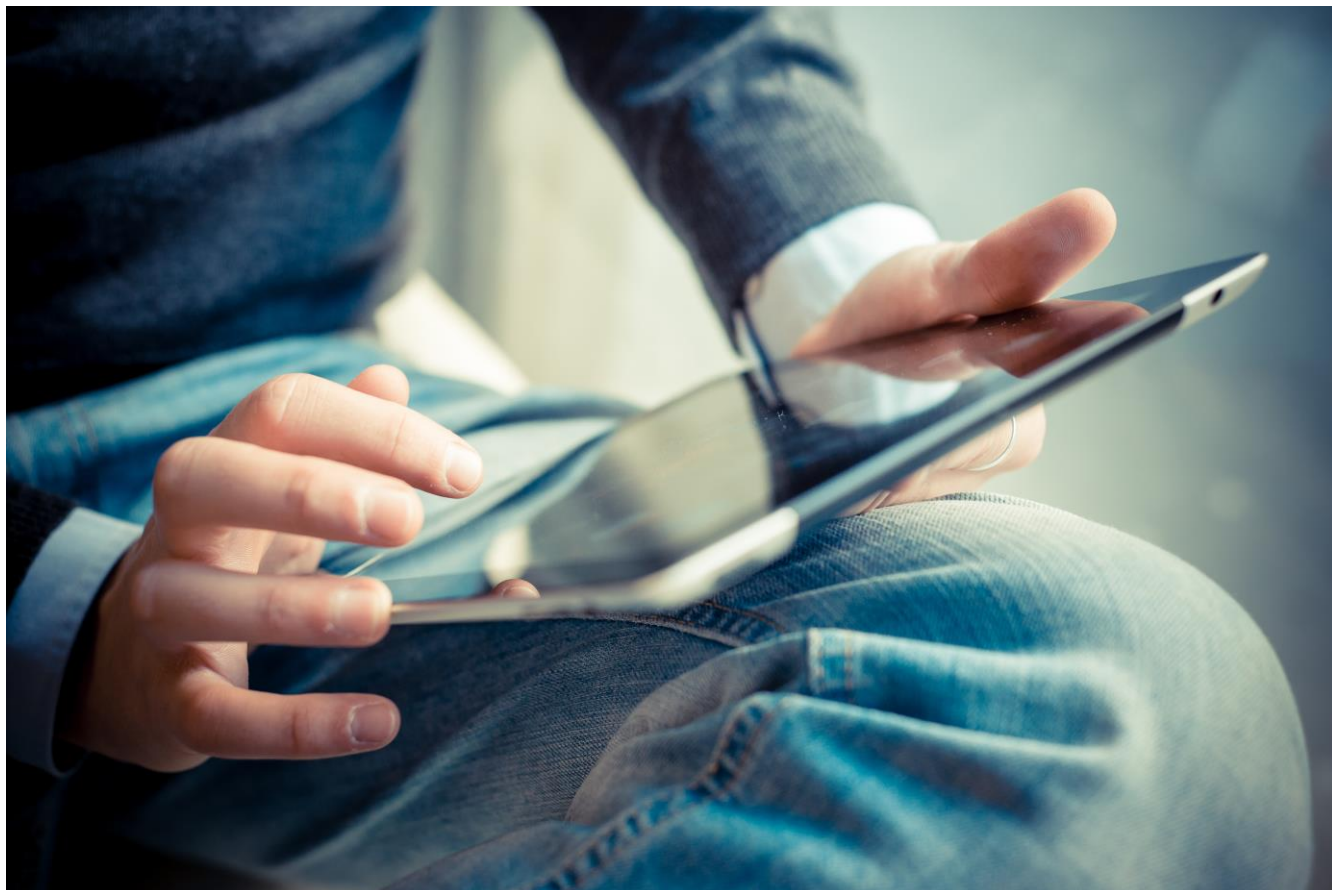
'Thanks to American innovation, the heroic efforts of frontline workers and new resources to fight the pandemic, there is increasing reason to be optimistic about the prospects for a swift recovery...We urge policymakers to focus on policies that will support – and not inhibit – that recovery.'

[Source: Business Roundtable media release]

Meetings and Proxy Advisers

Top Story | Getting closer? Senate Committee green lights proposed changes to continuous disclosure and meeting requirements

The Senate Committee has paved the way for the passage of Treasury Laws Amendment (2021 Measures No. 1) Bill 2021



The Senate Standing Committee on Economics has recommended that [Treasury Laws Amendment \(2021 Measures No. 1\) Bill 2021](#) be passed without amendment. The Committee's full report is [here](#).

The Committee's reporting date had been extended to 30 June 2021. However, the report was released early in light of concerns raised in a number of submissions about the imminent expiry of temporary COVID-19 measures.

Corporations (Coronavirus Economic Response) Determination (No. 3) 2020 and Corporations (Coronavirus Economic Response) Determination (No. 4) 2020 are due to expire on 21 and 23 March 2021 respectively.

Context: Proposed changes

Broadly the Bill proposes to do two things:

- Schedule 1 of the Bill proposes to temporarily extend and expand on the measures in Corporations (Coronavirus Economic Response Determination (No 3) 2020 to provide companies with legal certainty around the use technology in the context of holding and conducting meetings, distributing meeting related materials and executing and witnessing documents. It's proposed that these measures will apply until 15 September 2021.



- Schedule 2 of the Bill proposes to make permanent the temporary changes to continuous disclosure laws introduced in May 2020, which are intended to insulate directors from opportunistic class actions, and which would otherwise expire in March 2021.

You can find our summary of the proposed measures and the initial response from industry [here](#).

The Committee's views on the Bill

The report comments that there was 'widespread support' in submissions on the proposed amendments concerning virtual meetings and electronic communications in Schedule 1.

The Committee's view is that,

...'the extension of regulatory relief to allow companies and registered schemes to use technology to hold meetings, execute documents and send documents relating to meetings has been effective in facilitating the continuation of business during the COVID-19 pandemic. The extension of these measures supports companies and registered schemes to continue using technology to meet regulatory requirements while uncertainty and barriers to 'business-as-usual' caused by the pandemic exist...The committee welcomes the measures which enhance or expand upon the COVID-19 temporary measures, giving effect to feedback received from consultations. The committee welcomes the Government's consultation on proposals for implementing permanent measures and undertaking an opt-in pilot for hybrid annual general meetings'.

The Committee comments that stakeholder feedback on the changes in Schedule 1 may also 'further assist the formulation of permanent measures and pilot proposals'.

The Committee's view of the proposed changes in Schedule 2 of the Bill is that despite 'different views' on the proposed reforms, they should be passed without amendment. The Committee writes,

'...there is significant support for the aims underpinning the amendments. In the committee's view, the reforms strike an appropriate balance. On the one hand, they provide business and markets with sufficient certainty to pursue growth and facilitate economic recovery from the pandemic without the prospect of opportunistic shareholder class actions. On the other hand, the reforms retain sufficient sanctions to deter misconduct and maintain Australia's global reputation for market cleanliness. Submissions identified further suggestions for amendments to Schedule 2. As the committee has not received other evidence on those suggestions, it simply notes these comments for the Government's consideration'.

Dissenting reports

Labor and Greens Committee members support for the passage of Schedule 1 amendments

Both Labor and Greens Committee members support the passage of the changes in Schedule 1.

- Labor members recommended that 'Schedule 1 should ensure shareholders are always able to elect to receive communications and execute documents by either hard copy and/or electronic means, and also attend AGMs in person and/or by electronic means. The pilot of hybrid-AGMs is supported, subject to review'.
- The Greens recommended that Schedule 1 be supported on the basis that the changes are temporary. In making the recommendation Greens members stressed the need for 'further consideration' before changes are made permanent. The report states,

...'we are concerned that continued temporary extensions of these measures will encourage the government to attempt to make these measures permanent without due consideration, such as is being attempted with Schedule 2 of this Bill. Virtual AGMs could significantly constrain the ability of shareholders to hold companies to account. The parliament must be given the opportunity to fully examine the merits of any proposal to permanently allow virtual AGMs'.

Schedule 2: Labor and the Greens oppose proposed changes to continuous disclosure obligations

In separate dissenting reports, Labor Committee members Deputy Chair Alex Gallacher and Senator Jenny McAllister and Greens Committee member Nick McKim opposed the passage of the changes in Schedule 2.

Labor Committee members considered that the proposed changes would serve to undermine continuous disclosure.

'This change undermines the fundamental integrity of the share market, and is bad for ordinary investors...Labor Senators are of the view that the changes to continuous disclosure rules could lead to major failures of disclosure. These failures could have significant costs for millions of Australian investors and shareholders, and make Australia a less attractive destination for international investment.'

Greens Senator Nick McKim also opposed the proposed changes for similar reasons. Mr McKim considers existing laws to be a necessary accountability mechanism that operate to safeguard shareholders' interests and rejects claims that they place an overly onerous burden on companies or their directors. Mr McKim states that,

'Schedule 2 effectively reverses the burden of proof for civil action. This will pave the way for insider trading and be a boon for private equity and other large institutional investors who expect to be the first to know. On a wink and nod, the rich and the powerful will get the good oil, buy or sell ahead of the masses, and the companies and their bosses who participate in or facilitate this will, with a little cunning, be immune from any repercussions....Schedule 2 will benefit those on the inside and those with market power at the expense of millions of ordinary Australians who rely on timely and accurate information about their investments, including investment made through superannuation.'

Current Status

- The Bill has yet to pass either House and is currently before the House of Representatives.
- Notwithstanding the Committee report on the Bill outlined above, the Senate has agreed to refer to Bill back to the Economics References Committee for inquiry and report by 30 June to allow more time for submissions. Senate debate on the Bill has been adjourned until the first sitting day in August 2021.

[Source: Senate Standing Committee on Economics Report: Treasury Laws Amendment (2021 Measures No.1) Bill 2021 [Provisions]]

Support for a hybrid format: ACSI is broadly supportive of the government's proposed approach to the modernisation of meeting requirements

ACSI's submission to the senate committee

The Australian Council of Superannuation Investors' submission to the Senate Standing Committee on Economics Report inquiry into [Treasury Laws Amendment \(2021 Measures No.1\) Bill 2021](#) broadly supports the approach in the Bill.

Schedule 1

- **Supportive of temporary relief:**
 - ACSI supports the further temporary extension of COVID-19 relief enabling AGMs to be held virtually in the upcoming season.
 - ACSI also supports the provisions in the Bill aimed at safeguarding shareholder participation eg the right to speak in real time during the meeting, especially in light of the fact that ACSI has observed that virtual meetings 'have not generally provided the same opportunity for genuine interaction and engagement between shareholders and company representatives as in person meetings'.
- **Supportive of further consultation before enacting permanent changes:** ACSI also supports further consultation before any permanent changes are enshrined in legislation to allow for analysis of the impacts of the temporary provisions, as well as consideration of how to best to address 'longstanding issues' including 'operational weaknesses in the systems used to cast votes at company meetings'
- **ACSI supports a hybrid model:** The submission reiterates ACSI's support for permanently enabling meetings to be held in hybrid format. ACSI suggests there may be scope for enabling meetings to be held virtually in certain 'extreme circumstances' such as the pandemic.

Schedule 2

The submission raises a number of concerns about the proposed changes to continuous disclosure obligations on the basis that the reforms will 'operate to limit investors' ability to hold companies to account, and therefore undermine the integrity of the market'.

Ultimately, ACSI's view is that 'the changes proposed in Schedule 2 of the Bill should not progress, and the continuous disclosure obligations and misleading and deceptive conduct laws should remain in their pre-pandemic state'.

[Sourced: ACSI submission: Treasury Laws Amendment (2021 Measures No 1) Bill 2021]

Semler Brossy finds that more shareholder ESG resolutions than ever are receiving 50% or more support, despite the pandemic

Heading into the US proxy season, Semler Brossy Consulting group has [provided an update](#) on the key trends in they expect to see in 2021, based on their analysis of voting results previous years.

Key Takeaways

Support for shareholder ESG proposals

- In 2020, the number of shareholder ESG proposals that went to a vote was similar – 146 proposals in 2019 vs 148 in 2020
- The median level of support for shareholder ESG proposals was also stable at 29%
- Interestingly, Semler Brossy observed a 'significant increase' in the number of shareholder ESG proposals receiving above 50% support:
 - Thirteen social proposals (9%) and six environmental proposals (16%) received greater than 50% support in 2020.
 - In contrast, zero environmental proposals and only 9 social proposals received greater than 50% support in 2019.

Remuneration

- Semler Brossy found that the average level of support for 'say on pay' resolutions was unchanged at 90.5% for 2019 and 2020, despite the pandemic
- Overall, the number of 'say on pay' resolutions receiving less than 50% support actually dropped slightly in 2020 as compared with 2019, from 2.7% to 2.3%
- The proportion of 'say on pay' resolutions that received support of between 70% and 90% in 2020 was 19% (up from 15% in 2019, and the highest observed since 2011).
- There was variation in the average level of support for 'say on pay' resolutions, according to which sector the company is in. Companies in the utilities, industrials, real estate and consumer sectors had the highest levels of support varying between 90.8% and 93.4%. Companies in the energy and health care sectors had lower levels of overall support, varying between 89% and 89.6% support.
- Semler Brossy found that 89% of resolutions received a 'for' recommendation from ISS in 2020 – the highest rate observed since 2011. This is attributed in the report both to the impact of COVID-19 and to changes to ISS' pay for performance test. Semler Brossy suggests that this may shift in 2021 as it will become clear which companies have not followed ISS' guidance.

Director support

- The proportion of directors who received 95% or more support has been declining in recent years. In 2020 the 73% fell into this category (down from 75.2% in 2019 and 78.8% in 2016).
- The proportion of directors who received between 80 and 95% support has been increasing over the same period from 17% in 2016 to 21.3% in 2020
- Overall, the average level of support has fallen from 96.6% support in 2016 to 94.8% in 2020

[Source: Harvard Law School Forum on Corporate Governance and Financial Regulation 13/03/2021]



Shareholder Activism

SEC sides with Exxon to block two shareholder resolutions, denies Exxon's request to block a further two

Exxon Mobil's requests for the Securities and Exchange Commission (SEC) to allow it to omit several shareholder proposals from the 2021 proxy materials have met with 50% success.

Request granted: As you Sow's 'stranded assets' resolution will not go to the meeting

Shareholders will not have the opportunity to vote on As You Sow's [resolution](#) (filed on behalf of Jeffrey M Schubiner) seeking expanded reporting on if/how Exxon intends to reduce the risk of stranded assets related to its petrochemical investments after Exxon's request to omit it was accepted.

Exxon [argued](#) that it was appropriate to omit the proposal on the basis that the company had 'already substantially implemented the Proposal and the Company's practices, policies and procedures compare favourably to the Proposal'.

In a [statement](#), As you Sow expressed disappointment in Exxon and the SEC's stance. Lila Holzman, senior energy program manager of As You Sow commented

'Exxon's continued disregard of shareholder requests to address these global issues is surprising and concerning. Blocking shareholders' right to raise such concerns in the public forum created for these conversations serves neither shareholders nor Exxon, especially in the face of clear warning signs of overinvestment in plastic production.'

[Sources: Exxon Mobil's request to omit the proposal; As You Sow media release 10/03/2021; SEC decision 09/03/2021]

Request granted: Shareholder advertising proposal will not go to the meeting

Exxon's request to omit a proposal relating to the way in which Exxon advertises its products/services (you can find the full text [at p7](#)) filed by Henry S Thomassen was granted.

The proposal called on Exxon to:

...'establish an advertising policy for the Company, and any divisions or wholly owned or minority-owned Companies, to suspend for a period of not less than four years the purchase of advertising across all platforms from any media organisation that knowingly promulgates daily lies, falsehoods, incorrect facts and dangerous conspiracy theories. After four years this suspension may be reviewed and changed. This suspension would apply'

Exxon applied to omit the proposal on the basis that it relates to the ordinary business operations of the company, 'seeks to impermissibly micromanage the company' and 'does not raise a social policy issue with transcends day to day business matters.

Exxon also argued that it was appropriate that it be excluded because the proponent had failed to provide 'timely proof of the requisite stock ownership'.

[Sources: Exxon Mobil's request to exclude the proposal, SEC decision 26/02/2021]



Request denied: CBIS' proposal calling on Exxon to provide an audited climate transition report will be included in proxy materials

Exxon's request to omit a resolution (you can find the full text at [page 8](#)) filed by Christian Brothers Investment Services (CBIS) calling on the company to provide an audited report by 31 January 2022 on how 'a significant reduction in fossil fuel demand, envisioned in the IEA Net Zero 2050 scenario, would affect its [Exxon's] financial position and underlying assumptions' was not granted.

Exxon had argued that it was appropriate to omit the resolution on the basis that it is both: a) 'materially false and misleading' – Exxon argued among other things that 'the use of the concept of an audit in relation to future financial results or projections is not realistic...and could 'give a false sense of certainty regarding the analysis' – and b) because the company had already substantially implemented the proposal.

[Sources: Exxon's request to omit the proposal; SEC's decision 09/03/2021]

Request denied: BNP Paribas' climate lobbying proposal will be included in proxy materials

Exxon's request to omit a resolution (you can find the full text at [page 6](#)) filed by BNP Paribas calling for Exxon to report within the next year on how its own lobbying activities and those of the associations to which it belongs, align with the goals of the Paris Agreement and the steps being taken to address any misalignment, was not granted.

Exxon had argued that it was appropriate to omit the resolution on the basis it had already 'substantially implemented the Proposal' and on the basis that its 'practices, policies and procedures compare favourably to the Proposal'.

[Sources: Exxon's request to omit the proposal; SEC's decision 09/03/2021]

Transition commitment: Shareholder resolution withdrawn at HSBC following engagement

A \$2.4 trillion investor group led by ShareAction, have withdrawn a [resolution](#) at HSBC calling on the bank to reduce its exposure to fossil fuels following a commitment from the bank to put its own board-backed special resolution to shareholders at the upcoming 28 May AGM.

Details of HSBC's board-backed resolution

According to ShareAction's [statement](#), if passed, HSBC's resolution would commit the bank to:

- publishing (by the end of the year) and implementing a policy to phase of its financing of coal fired power and thermal coal mining by 2030 in the EU and the OECD and by 2040 in other markets
- setting, disclosing and implementing a strategy to align its financing of all sectors with the goals and timelines of the Paris Agreement, starting with Oil and Gas and the Power and Utilities Sector
- reporting its progress against this strategy on an annual basis, starting with the 2021 Annual Report and Accounts

Response from investors

Investors have [welcomed](#) HSBC's commitments and made clear that their focus will now be on monitoring implementation.

Luisa Florez, Head of ESG Solutions at La Banque Postale Asset Management, said:

'This resolution illustrates how collective active engagement and constructive discussions between investors and companies deliver concrete and impactful results, which ShareAction had an instrumental role in facilitating. HSBC's commitment is a call for action and an example for the banking industry and the Asian players. Having said that, we will keep monitoring the evolution and implementation of HSBC's commitments as part of our climate engagements.'

Emilie Westholm, Head of Responsible Investments & Corporate Governance at Folksam Group, said,

'We appreciate HSBC's transparency and willingness to engage with us throughout this process, as well as their efforts made to address our key concerns. Having said that, we will continue to monitor the bank's implementation efforts in the coming year. HSBC has the size and global reach needed to take a leading role in the transition towards a net zero economy, and we look forward to continuing this dialogue together with ShareAction and the wider co-filer group.'

[Source: ShareAction media release 11/03/2021]

Related news: Market Forces says HSBC must rule out investment in the Adani Group

Closer to home, Market Forces [has called on investors](#) to write to HSBC welcoming its new coal commitments and asking that it also commit 'cutting ties' with the companies supporting Adani's coal project.

Market Forces writes,

'...despite ruling out direct support for the Australia-based Adani Carmichael coal project in 2015, HSBC is a shareholder and bondholder in Adani Ports, which owns the company setting up coal haulage for the Carmichael project. HSBC's role in managing bonds for the State Bank of India (SBI) could also link it to Adani's disastrous Carmichael project. The State Bank of India is the only bank in the world which is still open to lending to Adani for the controversial coal project and is reportedly considering a AU\$1 billion loan to fund the coal project. HSBC has said nothing on SBI's potential funding of Adani Carmichael, even while investors dump SBI's green bonds in protest.

HSBC's coal policy will have a loophole the size of Australia unless it commits to no further financing for, or investment in, Adani Group companies. HSBC's new policy must also commit the bank to cutting ties with the SBI if it lends to Adani'.

[Sources: ShareAction media release 11/03/2021; Market Forces media release 16/03/2021]

Shareholder climate lobbying resolution filed at Rio Tinto (again)

Ahead of Rio Tinto Ltd's 6 May AGM, The Australasian Centre for Corporate Responsibility (ACCR) has filed two shareholder resolutions:

- a special resolution (constitutional amendment); and
- an accompanying, contingent ordinary resolution calling on Rio Tinto to review the advocacy of the industry associations to which it belongs, and suspend membership of any group whose lobbying efforts are counter to the goals of the Paris Agreement.

The resolutions and the ACCR's statements in support are [here](#).

Broadly, the ACCR has called on shareholders to support the lobbying resolution on the basis that the company's continued membership of a number of associations is in conflict with both its net-zero commitment and the company's long-term strategic interests.

The ACCR comments that the company's most recent review of its industry association membership focused on policy rather than advocacy and failed to identify any areas of misalignment, despite (in the ACCR's) view, various examples where this is the case.

The ACCR considers that,

'If our company is unwilling or unable to ensure that its industry associations support that transition, then shareholders should support the request that membership of those groups is suspended'.

The ACCR [withdrew](#) a climate-related lobbying resolution ahead of Rio Tinto's 2020 AGM following 'extended engagement with Rio Tinto executives, and a commitment by Rio Tinto to improve the oversight and nature of the advocacy by its industry associations'.

[Source: ACCR media releases 09/03/2021; 09/03/2021]

Successful engagement: Valero has agreed to introduce ESG metrics into executive pay plans in response to a shareholder resolution

As You Sow has withdrawn its [resolution](#) at Valero after the company agreed to introduce a new 'energy transition performance measure' into its executive compensation program.

The resolution had called on Valero to provide details of its how executive compensation plans meet the criteria of the Executive Remuneration Indicator of the [Net-Zero Company Benchmark](#) set by CA100+.

[Announcing](#) the withdrawal of the resolution, As You Sow said that Valero's commitment should accelerate the rate of progress towards meeting its climate goals. As you Sow President Danielle Fugere commented,

'We know that compensation incentives drive outcomes so linking success in meeting climate goals to compensation awards will drive positive climate outcomes.'

Similar resolutions filed at other companies

- As You Sow and other investors have filed a number of similar resolutions requesting alignment with one or more of the specific indicators in the CA100+ Net Zero Benchmark other companies including: General Electric, Caterpillar, General Motors, Twitter and United Airlines.
- The resolution at United Airlines has also already been withdrawn by lead filer Mercy Investment Services, following a commitment from United to set an enterprise wide net zero by 2050 emissions goal.

[Source: As You Sow media release 09/03/2021]

[In Brief | 'Say on Climate': Santos has announced that following consultation with shareholders, it will provide shareholders with a non-binding advisory vote on the company's Climate Change Report at the 2022 Annual General Meeting. The ACCR, which has filed a shareholder resolution at the company seeking an annual say on climate, has welcomed the announcement and flagged it's intention to 'continue to engage with the company over the coming weeks about a recurring annual vote beyond 2022'](#)

[Sources: Santos media release 16/03/2021; ACCR media release 16/03/2021]



Institutional Investors and Stewardship

DOL to 'revisit' Trump-era ESG rules and will not enforce compliance, ISS has welcomed the statement



The US Department of Labor (DOL) has [announced](#) that it will not enforce (until the publication of further guidance) the following Trump-administration rules:

- [Financial Factors in Selecting Plan Investments](#) which require 'plan fiduciaries to select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action'.
- [Fiduciary Duties Regarding Proxy Voting and Shareholder Rights](#)

This does not mean that the rules have been repealed, only that the DOL has undertaken not to enforce them or to pursue enforcement action for non-compliance with them.

In a [statement](#), DOL makes clear that it intends to 'revisit' both rules in light of concerns raised by stakeholders and in light of feedback that the changes may be operating to discourage fiduciaries from integrating ESG considerations into their investment decisions. The DOL states,

'The Department has heard from a wide variety of stakeholders, including asset managers, labour organizations and other plan sponsors, consumer groups, service providers, and investment advisers, who have asked whether these two final rules properly reflect the scope of fiduciaries' duties under ERISA to act prudently and solely in the interest of plan participants and beneficiaries. Stakeholders have also questioned whether those rulemakings were rushed unnecessarily and failed to adequately consider and address the substantial evidence submitted by public commenters on the use of environmental, social, and governance (ESG) considerations in improving investment value and longterm investment returns for retirement investors. The Department has also heard from stakeholders that the rules, and investor confusion about the rules, have already had a chilling effect on appropriate integration of ESG factors in investment decisions, including in

circumstances that the rules can be read to explicitly allow. Accordingly, the Department intends to revisit the rules'.

Further to this, announcing the change in stance, Principal Deputy Assistant Secretary for the Employee Benefits Security Administration Ali Khawar said that the DOL intends to 'conduct significantly more stakeholder outreach to determine how to craft rules that better recognise the important role that environmental, social and governance integration can play in the evaluation and management of plan investments, while continuing to uphold fundamental fiduciary obligations.'

ISS has welcomed the shift in stance

In a [statement](#), Institutional Shareholder Services (ISS) welcomed the DOL's announcement. ISS President & CEO, Gary Retelny said,

'ISS applauds today's decision by the Department of Labor not to enforce the burdensome, unnecessary, and illogical rules that were hastily adopted late last year and which served to diminish the rights of institutional investors...We are particularly gratified by the Department's recognition of the important role that environmental, social and governance integration can play in prudent investment management. We hope today's decision is a harbinger of future efforts by the Biden administration to support institutional investors in their critical role as good stewards of capital on behalf of millions of American savers.'

[Sources: DOL media release 10/03/2021; ISS media release 10/03/2021]

ACSI has pledged support for the Uluru statement from the heart

The Australian Council of Superannuation Investors (ACSI) has joined a growing group of supporting organisations in pledging support for the Uluru Statement from the Heart and its call for the establishment of a First Nations voice in the constitution.

ACSI CEO Louise Davidson [commented](#),

'ACSI recognises the importance of the Uluru Statement which has been developed by Aboriginal and Torres Strait Islander people, and provides a pathway for change and structural reform. ACSI supports the call for the establishment of a First Nations Voice enshrined in the Constitution. We support the vision outlined in the statement and the call for a Makarrata Commission to supervise a process of agreement-making between governments and First Nations, and truth-telling about our history. In embracing the statement we hope to see reforms that empower First Nations people and ensure their voices are heard'.

[Source: Australian Council of Superannuation Investors media release 12/03/2021]



Financial Services

Top Story | Changes to responsible lending on the way?

The Senate Economics Legislation Committee has paved the way for substantial changes to Australia's responsible lending laws.

Despite the senate Committee's recommendation that the Bill be passed without amendment, the Senate has [deferred debate](#) on the Bill 'until the first day in the next period of sittings' (11 May 2021), a development which has been [welcomed](#) by consumer group CHOICE.

You can find an update on the status of the Bill, the proposed changes and the senate's views on the Bill [here](#).

Responsible lending: Consumer group CHOICE has reiterated concerns about the possible rollback of responsible lending laws and welcomed the deferral of debate on the Bill

Consumer group CHOICE has reiterated concerns about possible changes to consumer protections contained in [National Consumer Credit Protection Amendment \(Supporting Economic Recovery\) Bill 2020](#) which is currently before parliament. You can find an update on the current status on the Bill [here](#).

According to [CHOICE](#), there have been 31,000 credit-related complaints on a range of issues including complaints about irresponsible lending practices, charging or incorrect fees, and fraud (among other topics) made to the Australian Financial Complaints Authority during the period November 2018 to December 2020.

The data shows that complaints are not concentrated in one state but spread across Australia. The highest concentration is in Terrigal and surrounding suburbs on the NSW Central Coast (the 2260 postcode had 1050 complaints).

CHOICE CEO Alan Kirkland commented,

'The banks promised they'd clean up their act after the shame of the Royal Commission hearings but over 31,000 credit complaints show there are still huge problems in the system...Repealing safe lending laws is an extraordinary thing to do when many Australians are struggling in the wake of COVID-19. If passed, this will be the biggest handout to the banks we've seen in decades. This is a time for the Senate to do what it was created to do - temper the influence of lobbyists and make sure Australians are put first'.

Mr Kirkland went on to caution that the proposed changes run contrary to the recommendation of the Hayne Commission that there be no changes made to existing responsible lending laws. Mr Kirkland said that at a time when mortgage lending is at record highs, repealing safe lending protections could see a spike in the number of borrowers with debts they can't afford and 'take away their ability to receive justice'.

Debate on the responsible lending Bill deferred until May

CHOICE subsequently issued a media release welcoming Senate's decision to agree to a government motion to defer debate on the Bill following the delivery of an open letter (coordinated by the group) against the changes.

According to CHOICE the letter was signed by over 33,000 people, 125 organisations and 100 experts. You can find the full text of the letter [here](#).

[Source: CHOICE media releases 16/03/2021; 16/03/2021]



Compliance with the General Insurance Code of Practice: Code Compliance Committee reports a 5% uptick in the number of reported breaches in FY2019-20

Key Takeouts

- Overall, the number of reported breaches increased by 5% on the 2018-19 financial year to 32870
- The highest number of 'significant' breaches concerned breaches of the Code's claims handling standards
- Failure to follow processes/procedures and human error are cited as the key cause of a number of breaches which the Committee has flagged as a key concern.
- Ahead of the full implementation of the 2020 Code on 1 July 2021, the Committee has made one 'overarching' recommendation for subscribers to ensure that their 'people, policies, processes, systems and governance arrangements are in place and sufficiently tested to ensure compliance'.
- The increase in the number of complaints relating to travel insurance and the increasing rate at which claims are being denied or withdrawn is also flagged as a key concern for the Committee
- The report includes recommendations for Code subscribers to lift standards ahead of the full roll-out of the 2020 Code

The General Insurance Code Governance Committee has released its [annual report](#) for the 2019-20 financial year into the general insurance industry's compliance with the 2014 General Insurance Code of Practice (the Code) which took effect on 1 July 2015.

The report is based on data provided to the General Insurance Code Governance Committee by Code subscribers.

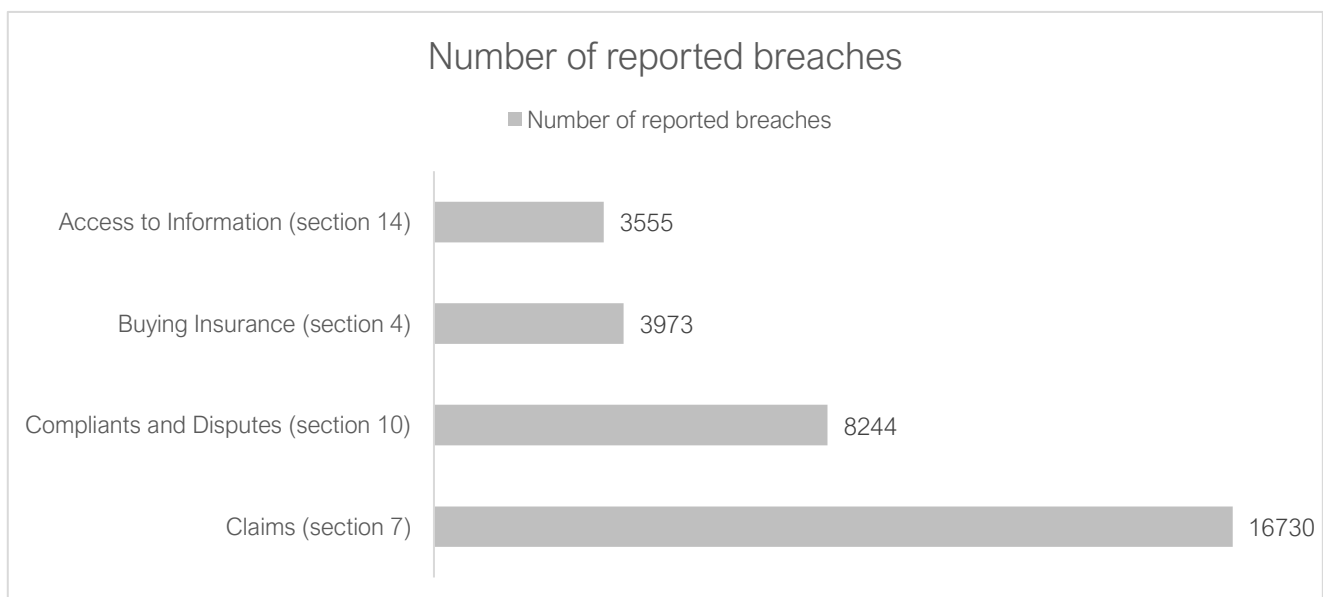
Failure to follow processes and procedures is a concern

The Committee observes that all Code subscribers reported that they have a three lines of defence model in place, have the capacity to comply with the Code and are satisfied that the data provided to the Committee is accurate.

However, the Committee has raised concerns that this is at odds with the high number of breaches being reported by some Code subscribers being attributed to failure to follow processes/procedures. This, the Committee comments, may indicate that 'some subscribers may not have the capacity to comply with all areas of the Code'.

Some Key Findings

Bulk of reported breaches fall into four areas



- Overall, the number of reported breaches increased by 5% on the 2018-19 financial year to 32870



- 99% of reported breaches concerned a breach of the four sections in the graphic above.
- Drilling down:
 - Reported breaches of section 14 (access to information) decreased 52% on the previous year. 99% of reported section 14 breaches were breaches of section 14.1 which requires Code subscribers to comply with privacy laws when collecting, storing, using/disclosing customers' personal information.
 - There was an 8% uptick in the number of reported breaches of section 7 of the Code as compared with 2018-2019. The report suggests that this is 'unsurprising' given the impact of COVID-19 on Code subscriber operations, but flags the level of 'ongoing non-compliance' as an area of concern and particular focus for the Committee.
 - There was a 69% uptick in the number of reported breaches of section 4 of the code (buying insurance)
 - There was a 31% uptick in the number of reported breaches of section 10 (complaints and disputes). The report suggests that this increase may be linked to the uptick in reported breaches of section 7 (and more particularly to the uptick in the number of reported breaches of timeframe requirements for handling disputes).

Commenting overall on these findings, the report states,

'Even accounting for the year's extraordinary events and their impact on subscribers' operations, it is discouraging to see consistently high breach numbers in areas of the Code where the Committee has previously set expectations and provided guidance for achieving compliance. It is especially disappointing to see the prevalence of significant and standard Code breaches being attributed to systems-related issues, processes and procedures not being followed, and to human error...We have provided an abundance of recommendations for implementing the organisational culture and corporate governance required for robust Code compliance, and we expect all subscribers to take these recommendations on board as a matter of urgency as they transition to the new 2020 Code'.

Travel insurance

Broadly, the report raises concerns about both the increase in the number of complaints relating to travel insurance and the number of claims being denied/withdrawn.

- The report states that complaints related to travel insurance have increased each year over the past five years and the proportion of complaints being resolved in favour of consumers also increasing. The Committee is concerned that this 'may indicate that subscribers are not adequately considering the need for changes to processes and procedures to address the underlying reasons for disputes'.
- The report found that Code subscribers declined 16% of travel insurance claims in 2019-20 (up from 12% in 2018-2019). The Committee flags the increase in the proportion of travel insurance claims being declined and withdrawn over the past five year period as an issue. The report states,

'The increase in declined claims suggests that consumers may not understand what the policy they have purchased covers and are claiming for items that are not covered by the policy. The increase in withdrawn claims could indicate deficiencies in subscribers' claims handling processes. The Committee encourages subscribers to review the reasons that travel insurance claims are declined or withdrawn to ensure they are meeting all Code obligations'.

Significant breaches

- Code subscribers self-reported 112 significant breaches during 2019-20 (down from 119 significant reported breaches in 2018-2019)
- Subscribers reported that these significant breaches affected approximately 1.9m consumers and involved remediation payments of more than \$157m.
- Most significant breaches of the Code concerned breach of the following four subsections:
 - subsection 4.4 – Sales processes and services of employees/authorised representatives must be efficient, honest, fair and transparent
 - subsection 7.2 – Claims handling fair, transparent and timely
 - subsection 7.11 – Claim assessed on basis of facts, policy terms and law
 - subsection 13.3 – Report within 10 business days to the Committee any significant code breach

Further detail

Breaches of claims handling standards

- Non-compliance with the Code's claims handling standards led to the highest number of significant breaches in 2019–20
- 36.6% of the significant breaches reported (or 41 of the 112 reported significant breaches) concerned breaches of the claims handling standards in section 7 of the Code.
- Of these 41 breaches:
 - 12 concerned non-compliance with subsection 7.2, which requires subscribers to handle claims in an honest, fair, transparent and timely manner
 - 17 concerned breaches of subsections containing timeframes for handling consumer claims eg timeframes for making a claim decision, timeframes for providing information to consumers and timeframes for responding to consumer requests about their claim.
- These breaches affected 397,000 consumers and required remediation payments of more than \$2m
- Code subscribers reported that these breaches were caused by:
 - the uptick in the volume of customer travel insurance related claims/inquiries being received as a result of COVID-19 travel restrictions
 - the challenges associated with both transitioning to work from home arrangements and bringing offshore processes back to Australian-based offices
- Though acknowledging the challenges Code subscribers have faced during the COVID-19 pandemic, the Committee called on subscribers to do more to ensure they are meeting set timeframes. The report calls on Code subscribers to 'closely examine why they continue to report high numbers of significant breaches relating to claims handling timeframes – not just those covered in section 7 of the Code, but also those referenced in section 6 (Standards for our service suppliers) and section 9 (Catastrophes). In addition to the 41 significant breaches of section 7, there were three significant breaches of section 6 and one of section 9'.
- New requirements:
 - From 1 July 2021, Code subscribers will need to comply the requirements in the 2020 Code which will mean that complaints processes must comply with the Australian Securities and Investments Commission (ASIC) guidelines.
 - From 5 October 2021 subscribers' complaints processes must comply with increased requirements set out in ASIC's Regulatory Guide 271: Internal Dispute Resolution (RG 271).
 - Code subscribers will also need to ensure that they provide sufficient resourcing, training and support for employees to ensure Code compliance, including around timeframes.

Buying Insurance

- 35.7% of significant breaches reported (or 40 of the 112 reported significant breaches) concerned breaches of the Code's buying insurance standards (section 4 of the Code).
- Of this group, the vast majority (93% or 37) related to breach of subsection 4.4 which requires subscribers and their authorised representatives to 'conduct their sales processes in an efficient, honest, fair and transparent manner'.
- The 37 breaches spanned a range of insurance classes, with the majority being home or motor policies.
- Systems error and human error the leading root cause:
 - The most common reason given for the breaches is subscriber error in calculating premiums resulting in overcharging consumers, providing them with incorrect refunds or consumers not benefitting from discounts for which they are eligible.
 - The report comments that the fact that 'systems related issues and human error' were also the key cause of many significant breaches in 2018-2019 is a concern.
 - The report adds that 'subscribers remain on track to record high levels of non-compliance with subsection 4.4 during 2020-21', noting that 53 breaches reported to the Committee in the four months to 31 October 2020 related to subsection 4.4
- The Committee concludes from this that 'subscribers' monitoring of the operation of their pricing systems is inadequate and this is leading to financial detriment for many consumers. To stem the tide of significant breaches

relating to the fair and efficient sale of insurance the Committee urges subscribers to review and test sales processes'.

Breaches identified by the Committee

- There was also a 42% increase in the number of breaches identified by the Committee through its investigations work. The report attributes this to the 20% increase in the number of investigations closed by the Committee in the 2019-20 period as well as to an increase in referrals from the Australian Financial Complaints Authority (AFCA) over the same period.
- The report expresses concern at the number of breaches of section 8 (financial hardship) by Code subscribers.
- The report comments that the 'Committee is concerned that subscribers' monitoring activities have not picked up these breaches of the Code's standards designed to protect the most vulnerable consumers. It suggests that subscribers' processes and procedures for assisting those experiencing financial hardship are inadequate or ineffective'.

Recommendations to improve Code compliance

The report includes seven recommendations aimed at lifting compliance and improving monitoring and reporting processes.

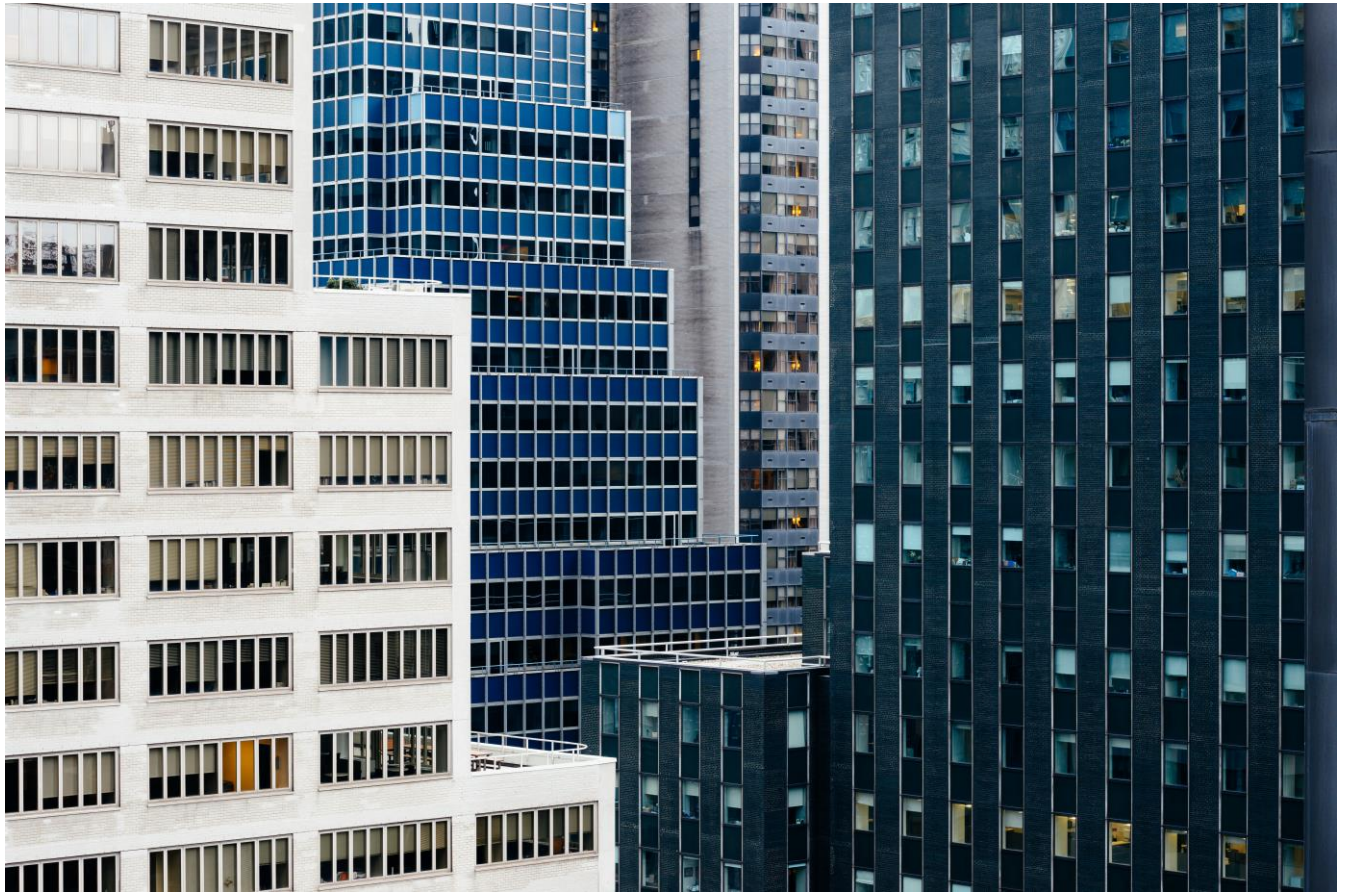
Improving systems/processes needs to be a priority

Ahead of the full implementation of the 2020 Code on 1 July 2021, the Committee makes one 'overarching' recommendation for subscribers to ensure that their 'people, policies, processes, systems and governance arrangements are in place and sufficiently tested to ensure compliance'.

Other recommendations

SIX RECOMMENDATIONS TO IMPROVE CODE COMPLIANCE	
Requirement to act 'honestly, efficiently, fairly and transparently'	<ul style="list-style-type: none"> ▪ 'Subscribers should ensure that paragraph 21 of the 2020 Code, which requires distributors and service suppliers to act honestly, efficiently, fairly and transparently, is interpreted and applied broadly when selling general insurance products to consumers'. ▪ Paragraph 21 states, 'We, our Distributors and our Service Suppliers will be honest, efficient, fair, transparent and timely in our dealing with you'.
Test sales processes	<ul style="list-style-type: none"> ▪ 'Subscribers should test sales processes and address any problematic areas – including the competency of their sales staff and the operation of their pricing systems'.
Meeting claims handling timeframes	<ul style="list-style-type: none"> ▪ 'Subscribers should review and address the root causes for significant breaches relating to claims handling timeframes in subsections 7.9, 7.10, 7.14 and 7.16'.
Review guidance	<ul style="list-style-type: none"> ▪ 'Subscribers should review the recommendations in Living the Code to ensure that the causes of Code breaches are better understood, and appropriate preventative action is undertaken'.
Claims handling	<ul style="list-style-type: none"> ▪ 'Subscribers must have appropriate claims handling systems and processes in place. To meet consumers needs, claims staff must have the knowledge and expertise to make claims decisions within the Code's timeframes.'
Staff training	<ul style="list-style-type: none"> ▪ 'Training on the processes and procedures relating to the sale of insurance should have a focus subscriber obligations under both the Code and the law'.

[Sources: General Insurance Code Governance Committee media release 15/03/2021; Full text report: General Insurance in Australia Report 2019-20]



Hayne implementation: ASIC is consulting on its proposed approach to implementing the deferred sales model for add on insurance ahead of the 5 October commencement date

Context

- Schedule 3 of the [Financial Sector Reform \(Hayne Royal Commission Response\) Act 2020](#) implements the government's response to Hayne recommendation 4.3 by amending the Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act) to implement an industry wide deferred sales model for the sale of add-on insurance products
- Broadly, the deferred sales model introduces a four-day pause between the sale of a principal product or service and the sale of an add-on insurance product and is set to commence on 5 October 2021.
- Treasury recently [sought stakeholder views](#) on whether there are classes of product that should be exempted from the deferred sales model through regulations. The consultation concluded on 15 February 2021.

ASIC consultation on implementation of the deferred sales model

ASIC has released for consultation:

- [CP 339](#) setting out ASIC's proposed approach to implementation.
 - Given the prescriptive nature of the deferred sales model and the 'significant consequences' of breaching requirements, ASIC proposes to publish a 'detailed regulatory guide' bearing in mind that the guidance cannot account for every individual circumstance.
- [Draft guidance](#) outlining: a) the scope of the deferred sales model; b) the obligations for add-on insurance providers; c) ASIC's power and proposed approach to granting individual exemptions; and d) prescribing the specific wording for the content and setting parameters for the form of the information insurance providers will need to give to customers to start the deferral period.
- ASIC's proposed [data template](#) for an individual exemption from the deferred sales model



A full list of ASIC's proposals and the specific questions on which ASIC seeks feedback is included at [p29-31 of the consultation paper](#).

The deadline for submissions is 23 April 2021.

Full compliance expected from the outset

ASIC has made clear that full compliance is expected from the outset – 'Without prior relief, applicants must prepare to comply with the deferred sales model from 5 October 2021' ASIC writes.

[Sources: ASIC media release 11/03/2021; CP 339 Implementing the Royal Commission recommendations: The deferred sales model for add-on insurance; Attachment 1 to CP 339: Draft Regulatory Guide 000 The deferred sales model for add-on insurance; Attachment 2 to CP 339: Data template for applications for exemption from the deferred sales model]

Hayne implementation: Consultation on breach reporting regulations

Treasury has released draft regulations – [\[exposure draft\] Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Regulations 2021: breach reporting](#) -for consultation.

The draft regulations are intended to support the implementation of amendments in Schedule 11 to the [Financial Sector Reform \(Hayne Royal Commission Response\) Act 2020](#) which give effect to the government's response to Hayne recommendations 1.6, 2.8 and 7.2.

The draft regulations propose to amend the Corporations Regulations 2001, the National Consumer Credit Protection Regulations 2010, the Corporations (Fees) Regulations 2001 and the National Consumer Credit Protection (Fees) Regulations 2010 to:

- prescribe civil penalty provisions that are not taken to be significant (and therefore may not be reportable under the relevant breach reporting regime if those provisions are contravened)
- ensure certain breach reporting offences and civil penalty provisions are subject to an infringement notice
- to make 'minor and technical amendments', including updating references to the Corporations Act

Timing

The due date for submissions is 9 April 2021.

The proposed commencement date is 1 October 2021 (in line with the commencement of Schedule 11 to the Act).

[Sources: Treasury Consultation 10/03/2021; [\[exposure draft\] Financial Sector Reform \(Hayne Royal Commission Response—Protecting Consumers \(2020 Measures\)\) Regulations 2021: breach reporting](#); Draft explanatory statement]

End of LIBOR dates confirmed: The FCA and BoE have urged market participants to complete their LIBOR transition plans

The UK Financial Conduct Authority (FCA) has announced the dates that panel bank submissions for all LIBOR settings will cease, after which representative LIBOR rates will no longer be available.

Timeline

All LIBOR settings will either cease to be provided or no longer representative:

- immediately after 31 December 2021 (for all sterling, euro, Swiss franc and Japanese yen settings and the 1 week and 2 month US dollar settings)
- immediately after 30 June 2023 (for all remaining US dollar settings) .

The FCA states that it does not expect that any LIBOR settings will become unrepresentative before these dates.

Commenting on the announcement, FCA CEO Nikhil Rathi said market participants now have certainty on when the LIBOR panels will end and urged them to complete their transition plans. This sentiment was echoed by Bank of

England Governor Andrew Bailey who called on participants to 'act now and complete your transition by the end of 2021.'

[Source: FCA media release 05/03/2021]

APRA releases draft reporting standards for data collection in National Claims and Policies Database

Following consultation, APRA has released a response to submissions on proposals to collect cyber insurance and management liability data in the National Claims and Policies Database (NCPD) as well as clean and marked up copies of the draft reporting standards.

Timeline

- The expanded data collection will start on a best endeavours basis with data for the 31 December 2020 half year
- Full data collection will start from the 31 December 2021 half year.

[Sources: APRA media release 15/03/2021]

In Brief | Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020 has passed both houses

[Source: Treasury Laws Amendment (Reuniting More Superannuation) Bill 2020]

In Brief | ALRC Financial Services Legislation Inquiry: The Australian Law Reform Commission has welcomed the appointment of Perth based Federal Court judge the Hon Justice Craig Colvin as a part-time Commissioner for the review of the legislative framework for corporations and financial services regulation

[Source: ALRC media release 22/02/2021]

In Brief | The case against rolling back responsible lending laws: Members of a consortium of 12 academics who conducted an in-depth analysis of the proposed changes have outlined why they believe the changes should not be progressed

[Source: The Conversation 15/03/2021]



Risk Management

ESG

Fortescue sets 2030 target for carbon neutrality

Key Takeouts

- Fortescue Metals Group has brought forward its carbon neutral target by ten years to 2030
- The new target will be reflected in the 'remuneration structure' across the organisation
- The push will be accelerated by new green energy projects

Fortescue Metals Group will bring forward its target date for carbon neutrality from 2040 to 2030 and incorporate revised emissions targets into the company's remuneration structure 'across the company', including making changes to short and long term incentives.

Fortescue has said that plans to achieve the new goal are 'well advanced' with a number of key projects, including green ammonia and green hydrogen projects, already identified and new technology being trialled.

Positioning the company as a green energy exporter

Announcing the more ambitious target, Fortescue CEO Elizabeth Gaines said that globally urgent action is needed if the goals of the Paris Agreement are to be met. By accelerating its actions to lower emissions, Fortescue aims to lead by example and ultimately, to position the company at the forefront of emerging green technology. Ms Gaines said,

'Fortescue will move from being a major consumer of fossil fuel, with a current trajectory of over one billion litres a year of diesel being used across our operations if we do nothing, to a major clean and renewable energy exporter. Fortescue Future Industries will be a key enabler of this target through the development of green hydrogen and green ammonia projects in Australia and internationally.

On a similar theme, Chair and founder Dr Andrew Forrest said,

'We intend to both provide the technology, the solutions and the capability for industry, not just to ourselves but around the world, to commercially adopt other energy sources and fuels that are totally free of carbon. Through this commitment that you have witnessed today of carbon neutrality by 2030 of just one major industrial platform called Fortescue, FMG will both lead the way and encourage industry worldwide through providing first mover solutions to their particular business and of course humanity's enormous carbon challenge.

Not a move away from iron ore or from the resources sector

In making this commitment Mr Forrest was clear that it does not signal a shift away from the iron ore business or more broadly from the 'global resources sector' for the company.

'Our strong focus on green energy and our target to achieve carbon neutrality by 2030 sits alongside and very comfortable with our continuing excellence and commitment to our own iron ore business as well as our enthusiastic and committed participation in the development of the global resources sector. It is worthwhile observing that it was the calculation that our operating costs would fall when we obviated the need to continue being a rich in carbon fuel importer to being a zero carbon fuel exporter and consumer of that energy ourselves that would lead to an even more competitive operating cost structure than Fortescue already has, leading the world iron ore business'.

Mr Forrest also emphasised that the plan would not mean compromising income or capital growth.

Scope three emissions?

Commenting on scope 3 emissions, Ms Gaines said that the company 'haven't set a target' and we're not looking to'. Having said this, she observed that a number of projects will reduce scope 3 emissions as well as scope 1 and 2 emissions in line with Fortescue's 2030 carbon neutrality commitment.

[Source: Fortescue Metals Group 15/03/2021]

In Brief | Inevitable transition? Energy Australia has brought forward the closure of the coal-fired Yallourn power station from 2032 to mid-2028 as part of its strategy to be carbon neutral by 2050. The ACCR has welcomed the commitment as a 'sign of the times' and called on other energy providers to fast-track closure dates

[Sources: Energy Australia media release 10/03/2021; ACCR media release 10/03/2021]

In Brief | The Climate Council has issued a statement calling on the government to rethink Australia's current climate policy including setting tougher emissions reduction targets and a plan to achieve them, in light of the decision of the European Parliament to introduce a carbon levy against high polluting nations

[Source: [registration required – accessed via LexisNexis Capital Monitor] Climate Council media release 11/03/2021]

Cybersecurity, Technology and Privacy

Ransomware threat: Government report reminds directors of their existing duty to ensure appropriate oversight of cyber risk



The Cybersecurity Industry Advisory Committee has released a report - [Locked Out: Tackling Australia's ransomware threat](#) – that provides an overview of the scale of the threat, the vulnerabilities being targeted and the growing sophistication of attacks in the Australian context, illustrated with 'real life' case studies.

The report also includes recommendations for large and small businesses to strengthen their defences/resilience.



Role of Directors

The report includes a brief discussion of the role and obligations of directors in this context as well touching on disclosure obligations.

The report comments that directors have a duty under existing law to exercise 'appropriate oversight' over cyber risk, including the threat of ransomware attacks. The report states,

'The risk of a ransomware attack, the company's preparedness for an attack, as well as its response to any actual attack, are all matters of such significance to an organisation that its board of directors would, pursuant to their duties to the company and their obligations under the Corporations Act, be expected to have appropriate oversight. For small and medium business, the directors' responsibilities are equivalent to a larger enterprise, a fact which directors of small and medium business need to be aware of'.

The report make clear that though directors are not expected to be 'experts in cyber risk and ransomware attacks' they nevertheless need to have a sufficient level of understanding to enable them to both:

- make 'independent assessments' of the capability of cyber experts advising the company and whether their advice should be relied on
- exercise 'appropriate oversight' of the risk, including challenging (where necessary) management's approach or actions in addressing/managing it

The report also suggests that following an attack, directors will need to consider the legality of paying a ransom.

'Following a ransomware attack directors will need to consider whether it is legal for the company to pay the ransom. If it is not, then the directors risk personal liability under ASIC's stepping stone liability approach'.

Disclosure

- Existing notification requirements: The report lists the various notification requirements in place requiring companies to notify regulators of data breaches and cyber incidents and observes that 'proposed reforms' are likely to increase and strengthen these requirements.

[Note: This appears to be a reference to the [Security Legislation Amendment \(Critical Infrastructure\) Bill 2020](#) which is currently before the House of Representatives.]

- Continuous disclosure obligations: The report also suggests that a ransomware attack could trigger continuous disclosure obligations for listed companies under the Corporations Act 2001 (Cth) and the ASX Listing Rules given the potential of an attack to impact the market value of a listed entity.

Related News: The government is planning to consult on introducing tougher cybersecurity obligations for directors

The government's [cybersecurity strategy](#) appears to contemplate legislating increased cybersecurity responsibilities on directors, though the details about what the changes might look like are not clear. Paragraph 36 of the strategy reads:

'[36] The Australian Government will also work with businesses to consider legislative changes that set a minimum cyber security baseline across the economy. This consultation will consider multiple reform options, including:

the role of privacy, consumer and data protection laws
duties for company directors and other business entities
obligations on manufacturers of internet connected devices.

This consultation will examine ways to simplify and reduce the cost of meeting any future minimum baseline'.

[Sources: Cyber Security Industry Advisory Committee report: Locked Out: Tackling Australia's ransomware threat; Cyber Strategy 2020; Minister for Home Affairs Peter Dutton media release 10/03/2021]

Australia's cybersecurity strategy: What is our approach to reconciling developing our cyber offensive capability while also protecting vulnerable businesses?

Context

- On 2 March 2021 Microsoft announced that it had become aware that 'malicious actors' were exploiting security flaws in Microsoft Exchange Servers to access email accounts and 'to enable further compromise of the Exchange server and associated networks'.
- The Australian Cyber Security Centre (ACSC) subsequently confirmed 'extensive targeting' and 'confirmed compromises' of Australian organisations using Microsoft Exchange email software.
- The ACSC said that if left unpatched, the vulnerabilities in the software could enable an 'unauthenticated attacker' to upload web shells to 'maintain persistent access' to systems and 'to write files and execute code with elevated privileges'.
- The ACSC called on businesses to urgently deploy the necessary security patches and to undertake specific detection steps outlined by Microsoft. More details about the mitigation steps are available on the ACSC site [here](#).

How is Australia going to balance competing priorities?

Writing in [The Conversation](#), Monash University's Cartsen Rudolph suggests that this raises questions about the responsibilities of software providers to spot/address vulnerabilities and to notify customers. That is: a) why Microsoft was so slow to spot the vulnerabilities in question (given that the versions of the software were released in some cases as long ago as 2010); and b) why, if Microsoft was aware of the vulnerabilities in January, it did not alert customers earlier.

More broadly, Mr Rudolph suggests that it also raises broader questions about how the contradiction between Australia's objective of developing offensive cybersecurity capabilities (which may benefit from/leverage software vulnerabilities) and the competing objective of protecting businesses against the threat of attack (through addressing known vulnerabilities) is being/will be handled at a policy level. He writes,

'Australia's Cyber Security Strategy 2020 does not address the contradiction between establishing offensive cybersecurity capabilities and protecting Australians from cybersecurity vulnerabilities. The establishment of offensive cybersecurity capabilities is explicitly mentioned in the strategy. In contrast, the detection of vulnerabilities with the goal of mitigation is not a clear goal. Nor is openness about existing vulnerabilities — which would empower Australian citizens to react to them — part of the strategy. Australia has the expertise across the public sector, private sector and civil society to have this important dialogue on how to best protect Australian citizens and businesses.'

[Source: The Conversation 12/03/2021]

Breaking the grip of default settings? As part of its digital platforms inquiry, the ACCC is seeking feedback on the impact of default settings on consumer choice/competition

As part of the Digital Services Platform Inquiry, the Australian Competition and Consumer Commission (ACCC) has released an [issues paper](#) seeking stakeholder views on the impact of 'potential competition and consumer issues in the provision of web browsers and general search services to Australian consumers and in particular, the impact of default arrangements'.

By way of background, the ACCC observes that the Digital Platforms Inquiry Final Report found that Google search is set as the default search option on nearly all mobile devices (95% of mobile devices). ACCC Chair Rod Sims said that the regulator considers this to be an issue because 'in general, setting a default option substantially increases the likelihood that consumers and businesses will stick with that option. This can have the effect of reducing competition and consumer choice in the supply of these services'.

Among other key issues, the ACCC seeks feedback on:

- The impact of pre-installation/default settings on consumer choice and competition and the extent to which 'consumer harm can arise from the design of default arrangements'

- Views on the effective of Google's choice screen roll out in Europe and whether a similar approach might be appropriate in Australia
- Whether there are alternatives (ie other than choice screens) that could facilitate competition and improve consumer choice in the supply of general search services/browsers in Australia.

Feedback on the issues paper will be used to inform the inquiry's third interim report which will be provided to the Treasurer by 30 September 2021.

The deadline for submissions is 15 April 2021.

[Source: ACCC media release 11/03/2021; ACCC Issues paper March 2021]

In Brief | Regtech in the context of whistleblowing: Flinders academic Vivienne Brand has written a paper discussing the possible application of AI in the context of corporate whistleblowing including considering whether 'whistlebots' could replace human whistleblowers and the possible advantages and disadvantages of such a development. Among other things, Professor Brand asks: 'Will a whistlebot be a more effective teller of truth than the human whistleblowers we are coming to rely on in modern corporate regulatory systems, free of anxiety as to the emotional consequences?'

[Sources: Oxford Law School blog 09/03/2021; Full text paper: Brand, Vivienne, Corporate Whistleblowing, Smart Regulation and Regtech: The Coming of the Whistlebot? (September 24, 2020). University of New South Wales Law Journal, Vol. 43, No. 3, 2020, Available at SSRN: <https://ssrn.com/abstract=3698446> or <http://dx.doi.org/10.2139/ssrn.3698446>; Oxford Law School Blog 09/03/2021]

In Brief | Deloitte report into global trends in technology, media and communications predicts growth in digital reality, virtual doctor visits, cloud, and sports tech will continue to intensify, fuelled by the pandemic

[Source: Deloitte media release; Deloitte report: Technology, Media & Telecommunications Predictions Report 2021]

Other Developments

Aged Care Royal Commission's Final Report | Implications and impact

MinterEllison has released a report exploring the implications of the 148 recommendations in the Aged Care Royal Commission Final Report. The report considers the governance, quality and safety, the workforce, funding and financing implications and explains what industry can do to prepare for the sector's transformational journey.

The full text of the report is [here](#).

Other News

Bill to prohibit 'all sexual harassment' introduced into the House

The [Sex Discrimination Amendment \(Prohibiting All Sexual Harassment\) Bill 2021](#) was introduced by Independent MP Zali Steggal as a private members Bill into the House of Representatives on 15 March.

Broadly, the Bill proposes to:

- Introduce a 'blanket prohibition' on sexual harassment into Sex Discrimination Act to 'ensure that the act of sexual harassment is prohibited in all situations, rather than exclusively those named in the Act'. The explanatory memorandum makes clear that the proposed changes are intended to clarify that the prohibition is intended to apply in all circumstances, including to those working in the gig economy and those that were 'historically overlooked such as statutory appointees including judges and members of parliament'.
- The Bill also 'addresses identified shortcomings in the legal circumstances to provide protection against sexual harassment that may occur between witnesses and lawyers; lawyers and judicial officers or court staff; solicitors and barristers; or between barristers'.
- Proposed amendments to section 105 of the Sexual Discrimination Act would also expand the provisions which prohibit the 'aiding and abetting' of sexual discrimination to also include a prohibition of 'aiding and abetting' sexual harassment.

In a statement, Ms Steggal commented that proposed changes would implement changes put to the government in the [Respect@Work report](#) which have not so far being implemented.

Ms Steggal described the Bill as 'an important first step to address sexual harassment in every workplace' and an important demonstration of the parliament's commitment to safe and respectful workplaces.

[Sources: Zali Steggal media release 08/03/2021; Sex Discrimination Amendment (Prohibiting All Sexual Harassment) Bill 2021]

Race Commissioner calls for a new national framework to address the resurgence of racism in Australia

Race Discrimination Commissioner Chin Tan has [called](#) on the Federal government to fund and implement a National Framework on Racism and Social Cohesion 'to deal with a resurgence in racism'.

The Commission has released for consultation a [concept paper](#) outlining what a 'more comprehensive approach to anti-racism might look like' including examples of international approaches, as a starting point for discussion.

The paper includes suggested guiding principles and eight proposed national outcomes (with suggested accompanying actions).

You can find the full list of suggested guiding principles and suggested national strategy outcomes and accompanying actions at p20-26 of the paper [here](#).

The table provides a high level summary of four suggested outcomes and lists some of the suggested accompanying actions to achieve them.

SUGGESTED OUTCOME	SOME SUGGESTED ACTIONS
Ensuring effective legal protections against racism	<p>Regularly reviewing existing laws to ensure that:</p> <ul style="list-style-type: none">■ protections/remedies for victims of racism are both accessible and affordable■ the legal framework has the capacity to address systemic and institutional discrimination
All sectors (including the corporate sector) commit to countering racism	<ul style="list-style-type: none">■ encouraging the corporate sector to act to 'counter and prevent structural racism and racial inequalities' including through developing leadership pathways to promote racial equality

SUGGESTED OUTCOME	SOME SUGGESTED ACTIONS
	<ul style="list-style-type: none"> enabling the Australian Human Rights Commission to AHRC 'certify special measures undertaken to promote equality'
Diverse representation in public life	<ul style="list-style-type: none"> making Aboriginal and Torres Strait Islander and multicultural communities are central to the development of all policies, programs and strategies affecting them supporting Indigenous, culturally and linguistically diverse communities to ensure equal representation in 'areas linked to political, economic, social and cultural rights'
The adoption by government of diversity targets and a commitment to measure progress against them	<ul style="list-style-type: none"> ensuring 'data collected across all national frameworks is disaggregated by ethnicity to identify where there are unequal outcomes based on ethnic background or race' and addressing these issues 'across all social-economic outcomes' ensuring there is recognition of the 'discriminatory experiences of women from minority backgrounds including systemic inequality' and putting in place appropriate 'additional protections' as appropriate

Next steps

The Australian Human Rights Commission plans to engage with the community sector to obtain feedback on the concept paper 'over the coming months'. This will include workshops with peak bodies and the opportunity for stakeholders to provide comment via the website.

The Commission will also engage with government departments and ministers to 'identify the existing gaps in services, data needs, and ways to improve the approach of government to this critical issue'.

[Sources: Australian Human Rights Commission media release 16/03/2021; Speech by the National Race Discrimination Commissioner, Chin Tan, announcing plans for the National Anti-Racism Framework; Concept paper: Australian Human Rights Commission Concept Paper for a National Anti-Racism Framework March 2021]

Productivity Commission Review into supply chain vulnerabilities extended to July 2021

On 19 February, the government tasked the Productivity Commission with undertaking a review into supply chain vulnerabilities and risks. See: [Governance News 24 February at p30](#).

Extended timeframe

The timeframe for the study has been extended to July 2021 to allow additional time for consultation.

- The Commission plans to release an interim report in 'late March' focusing on supply chain vulnerabilities from Australia's role as an importer. Stakeholders will have opportunity to provide their comments on the report by Friday 30 April 2021.
- The Commission is also looking at supply chain vulnerabilities from Australia's role as an exporter with a particular focus on: a) how firms manage and respond to disruptions in export market conditions/access; and b) the impact of disruptions (including in regional areas). Comments on these issues are also invited by 30 April 2021.
- The final study report, including Australia's role as an exporter, is to be handed to the Australian Government in July 2021, and will be publicly released shortly afterwards.

[Source: Productivity Commission email update 12/03/2021; Consultation home page]

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