

Governance News

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

Top Story | MinterEllison insights into key FSRC Final Report Recommendations

Context

The Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission) was presented to the Governor-General on Friday 1 February 2019. The report was publicly released on 4 February.

[Note: The government's response to the recommendations, includes a table mapping the government's proposed actions against each recommendation. This can be accessed [here](#). Further actions/planned actions announced since the release of the report are outlined separately below.]

MinterEllison insights

The articles below provide insights from MinterEllison experts into the likely impact of certain report recommendations.

Viewing the articles: Either click on the title of the article in the left hand column, or copy and paste the hyperlink in the right hand column into your browser.

Financial Services Royal Commission Final Report: Impact for Industry: Cross cutting themes of the Hayne Final Report	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-impact-for-industry
FSRC Final Report: Impact for boards and corporate governance	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-impact-for-boards-and-governance?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4
FSRC Final Report: Implementing cultural change	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-implementing-cultural-change?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4
FSRC Final Report: technology and data implications	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-technology-and-data-implications?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4
FSRC Final Report: Lending Implications	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-lending-implications?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4
FSRC Final Report: Impacts on Vertical Integration	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-impacts-on-vertical-integration?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4
FSRC Final Report: BEAR Regime	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-bear-implications?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4
FSRC Final Report: Impacts on Mortgage Broking	https://www.minterellison.com/articles/financial-services-royal-commission-final-report-mortgage-broking?sc_trk={2D26AFE6-2655-4FA2-92AB-94AC59520247}&sc_camp=24C30182D96A436FA8304217C4746EC4



FSRC Final Report: The government's initial response, Federal Labor's response

The government has committed to actioning each of the 76 report recommendations and has released a response document mapping each of its proposed actions against each of Commissioner Hayne's recommendations.

In addition to these measures, the government also announced it plans to:

- Establish an independent inquiry (to commence in three years) to review and assess whether industry practices have changed following the Royal Commission and have led to better consumer outcomes.
- Confer 'greater corporate criminal jurisdiction on the Federal Court', to help ensure the prosecution of financial crimes does not face delays as a result of heavy caseloads in the Courts.
- Conduct a review into the coordination and funding of financial counselling services.

[Note: The Treasurer has since announced an 'immediate' review of financial counselling services. The announcement is outlined in a separate post below.]

- Extend the proposed Design and Distribution Obligations (DDOs) to apply to *National Consumer Credit Protection Act 2009* (Cth) (NCCP Act) products and ASIC Act products and the ASIC Product Intervention Powers (PIP) to apply to *Australian Securities and Investments Commission Act 2001* ASIC Act (Cth) products. 'The Government recognises that the extension of the DDOs may have a significant impact on many businesses and will carefully consider how these reforms are implemented' the response document states.

[Note: This the proposed design and distribution obligations and product intervention powers referred to are those in legislation currently before parliament: *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018*. This Bill is at second reading stage in the House of Representatives.]

- Consult with Aboriginal and Torres Strait Islander peoples and relevant representative bodies as well as the superannuation industry about difficulties in using binding death benefit nominations.
- 'Support' the ACCC in considering integration issues where they are identified as part of its market studies work.

Government response: The government's full response, including specific actions in relation to each of Commissioner Hayne's recommendations is available [here](#).

Federal Labor Party's response to the report recommendations

In a statement acknowledging the release of the Financial Services Royal Commission's Final Report, Federal Opposition Leader Bill Shorten reiterated his party's 'in principle support' for all the Commissioner's Recommendations. He added that (if elected) his government plans to:

1. increase jail terms and financial penalties for 'corporate crime'
2. establish a whistleblower reward scheme and establish a whistleblower protection authority
3. Fund a 'dedicated special prosecutor to bring corporate criminals to justice'.

Minister Kelly O'Dwyer is quoted in media reports as dismissing Labor's plan, adding that she expects that the government's whistleblowing Bill will be passed by the end of February.

[Note: *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2018* was introduced into the Senate on 7 December 2017 and is at first reading stage in the House of Representatives.]

FSRC recommendations 3.6 and 3.7: The government plans to amend Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017

Treasurer Josh Frydenberg has announced that the government plans to propose an amendment to Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No 1) Bill 2017 (Bill) to action recommendations 3.6 and 3.7 of the Financial Services Royal Commission's Report.

Context: The Recommendations

Recommendation 3.6: No treating of employers: Section 68A of the SIS Act should be amended to prohibit trustees of a regulated superannuation fund, and associates of a trustee, doing any of the acts specified in section 68A(1)(a), (b) or (c) where the act may reasonably be understood by the recipient to have a substantial purpose of having the recipient nominate the fund as a default fund or having one or more employees of the recipient apply or agree to become members of the fund. The provision should be a civil penalty provision enforceable by ASIC.

Recommendation 3.7: Civil penalties for breach of covenants and like obligations: Breach of the trustee's covenants set out in section 52 or obligations set out in section 29VN, or the director's covenants set out in section 52A or obligations set out in section 29VO of the SIS Act should be enforceable by action for civil penalty

Government's amendments

- The Treasurer said the Bill (as drafted) would see directors subject to civil penalties for breaches of their best interests obligations. In line with the Commissioner's recommendation, the government will propose an amendment to extend these director penalties to trustees.
- In addition, he said that the government would amend s 68A of the *Superannuation Industry (Supervision) Act 1993 Cth* (SIS Act) to make it a civil penalty provision enforceable by ASIC.

The Treasurer called on Labor to support the proposed changes on the basis that it 'would immediately enhance accountability of superannuation funds and strengthen protections for consumers'.

[Source: Treasurer Josh Frydenberg media release 12/02/2019]

'Forward looking' APRA capability review to commence in March, three person panel named

Treasurer Josh Frydenberg has announced that the capability review of the Australian Prudential Regulation Authority (APRA) will commence in March. The review has been commissioned in response to the as Financial Services Royal Commission recommendation (6.13) that a capability review commence as soon as it practicable.

- **Three person expert panel to lead the review:** The expert panel that will lead the review will comprise former Chair of the Australian Competition and Consumer Commission Graeme Samuel AC as Chair, professor in corporate governance at UWS Diane Smith-Gander and former Acting Governor, at the Reserve Bank of New Zealand Grant Spencer.
- **'Forward looking assessment' of APRA's capability:** The Treasurer said that the panel is expected to give specific consideration to APRA's capability to promote financial stability within its frameworks as well as its readiness to respond to issues raised by the Royal Commission and the Productivity Commission including:
 - APRA's capability to regulate superannuation entities for the benefit of members;
 - the role of enforcement activities and coercive powers; and

- the supervision of culture, governance and remuneration in regulated institutions.

The capability review will also build on the recently completed International Monetary Fund's Financial Sector Assessment Program which included an assessment of APRA's policy and supervisory framework for banks and insurers.

- **Timeline:** The panel's work will commence in March 2019. The Report will be provided to the government by 30 June 2019.

[Sources: Treasurer Josh Frydenberg media release 11/02/2019; The AFR 11/02/2019]

Progress towards a national farm debt mediation scheme: agreement to take the 'first steps' towards actioning the Commission's recommendation

In response to Commissioner Hayne's recommendation that a national farm debt mediation scheme should be enacted (recommendation 1.11), the Treasurer has announced that at a meeting of agricultural ministers in Adelaide, the commonwealth, states and territories has agreed, to take the first steps towards actioning the recommendation.

The Treasurer said that senior officials from the Commonwealth, states and territories will begin work on the national scheme immediately, with states and territories to deliver a paper on their preferred model. He added that progressing the national scheme will also be on the agenda at the upcoming Drought Finance Taskforce meeting.

The Treasurer said that a national scheme would assist lenders and borrowers to agree on practical measures that may lead to the borrower being able to address financial difficulties that have caused the loan to become distressed and also allow farmers who own properties across state borders to use and access the one scheme.

[Source: Treasurer Josh Frydenberg media release 09/02/2019]

'Immediate' review of financial counselling services announced

The Treasurer has announced an 'immediate' review of financial counselling services. The review will be led by the Department of Social Services in consultation with Treasury and the Department of the Prime Minister and Cabinet.

The review will consider the coordination and funding of financial counselling services including gaps and overlaps in current services and the adequacy of appropriate delivery models for future funding.

The Treasurer said that currently financial counselling services face a number of challenges 'inconsistent and short term grant based funding streams, fragmented delivery across jurisdictions and high demand'. He said that the review is a change to increase predictability and stability in funding as well as consider whether funding sources can be broadened. The review is also intended to benefit drought-affected communities, the Treasurer said.

States and territories, private and not-for-profit funders, the financial services sector and those involved in service delivery will be consulted. No timeline for completion of review was announced.

[Source: Treasurer Josh Frydenberg media release 07/02/2019]

APRA's timeline for implementing the Financial Services Royal Commission's recommendations

Commissioner Hayne's final report contained a number of recommendations that require specific action by the Australian Prudential Regulation Authority (APRA).

On 11 February, APRA issued a timeline for implementation of these recommendations.



FSRC recommendation	APRA's implementation timeline
Recommendation 1.12: Valuations of land (amendments to Prudential Standard APS 220)	Consultation on proposed revisions Q1 2019 Final version complete by Q4 2019
Recommendation 1.17 — BEAR product responsibility	Consultation on proposed requirement released Q2 2019 Requirements finalised by Q4 2019
Recommendation 4.14 — Additional scrutiny for related party engagements (amendments to Prudential Standard SPS 250)	APRA's report on the post-implementation review of the prudential framework for superannuation (already on foot) and will address this recommendation. The report will be released Q2 2019. Formal consultation on revised standards will commence 'shortly thereafter', with a view to having a new standard finalised 'in 2020'.
Recommendation 5.1 — Supervision of remuneration — principles, standards and guidance (5.2 and 5.3)	Proposed revisions to Prudential Standard CPS 510 will be released 'by mid-2019'. APRA's intention is to have a final standard determined in 2020.
Recommendation 5.7 — Supervision of culture and governance	No specific timeframe is given. APRA writes that 'Developing the capacity to supervise these issues, across a wide range of entities, with considerably greater intensity will be a multi-year program'. APRA adds that it is working with the Government to ensure it has sufficient resources to implement this recommendation.
Recommendation 6.10 — Co-operation memorandum	APRA and ASIC will jointly complete the review of cooperation requirements by Q4 2019.
Recommendation 6.12 — Application of the BEAR to regulators	APRA will develop and publish accountability statements 'before the end of 2019'.

APRA states that it is also examining each of the 12 matters in relation to individual entities that have been referred to it by the Financial Services Royal Commission.

The cases in question are being examined in parallel with APRA's broader Enforcement Review which is due to be completed by the end of March 2019. The review is expected to be published 'shortly thereafter'.

[Sources: APRA media release 11/02/2019; APRA's response to FSRC recommendations]

Institutional Shareholders and Stewardship

United Kingdom | Consultation on proposed changes to the UK Stewardship Code: Proposed changes include a new requirement for investors to report on how their purpose, values and culture enable them to meet their obligations to clients and beneficiaries and an explicit requirement to take ESG factors into account.

The UK Financial Reporting Council (FRC) is consulting on proposed changes to strengthen the UK Stewardship Code (Code).



The proposed changes are intended to ensure the Code is effective in raising the quality of stewardship across the investor community. Key changes include: 1) more 'rigorous' reporting requirements for signatories with a focus on how their stewardship activities align with their stated purpose, values and culture; 2) a requirement for signatories to take material environmental, social and governance factors into account; and 3) increased oversight of reporting by the FRC.

Some Key Changes

- 1. Purpose, values and culture:** A requirement for investors to report on how their purpose, values and culture enables them to meet their obligations to clients and beneficiaries. The FRC says that this brings the Stewardship Code into alignment with the UK Corporate Governance Code and 'encourages embedding behaviour conducive to effective stewardship in the investor community'.
- 2. Requirement to take ESG factors into account.** The proposed Code now refers to environmental, social and governance (ESG) factors. Signatories are expected to take material ESG issues into account when fulfilling their stewardship responsibilities.
- 3. Stewardship beyond listed equity.** The proposed Code now expects investors to exercise stewardship across a wider range of assets where they have influence and rights, in the UK and globally.

Further Detail

New definition of 'stewardship'

The proposed new definition of stewardship is: 'Stewardship is the responsible allocation and management of capital across the institutional investment community to create sustainable value for beneficiaries, the economy and society. Stewardship activities include monitoring assets and service providers, engaging issuers and holding them to account on material issues, and publicly reporting on the outcomes of these activities.'

The new definition is intended to both:

- identify the primary purpose of stewardship as looking after the assets of beneficiaries that have been entrusted to the care of others;
- broaden the scope of the Code to include investment decision-making and investment in assets other than listed equity.

Environmental Social and Governance (ESG) factors

- **ESG factors:** Under the proposed changes, Code signatories will be required to integrate stewardship with their investment approach and demonstrate how they take into account material ESG factors, including climate change. They will also be required to demonstrate how prospective and current investments are aligned with their stewardship approach.

Structure

- **The structure of the code now follows a similar format and structure to the UK Corporate Governance Code** with Sections (numbered Sections of the Code group Principles and Provisions together under common themes), Principles (actions and behaviours that all signatories are expected to demonstrate) and Provisions (more specific policies, processes and activities that most signatories will be expected to follow) accompanied by supporting guidance (suggestions of good practice and ways in which the Code can be followed which is not mandatory).

- **The Principles are to be followed on an ‘apply and explain’ basis.** This means that all signatories to the Code should apply the Principles and explain clearly how they have done so, in a manner that enables their beneficiaries and/or clients to evaluate their Statements.
- **The Provisions are to be followed on a ‘comply or explain’ basis.** It is expected that most signatories will be able to comply with most Provisions and meaningfully describe how they have done so. The Code, however, is not a rigid set of rules and provides the opportunity to explain an alternative approach.
- **The Principles, Provisions and Guidance have been tailored to three broad categories of Code signatories** — Asset Owners, Asset Managers and Service Providers — to better reflect their role and responsibilities in the institutional investment community.

Reporting

Under the proposed changes, signatories will be required to disclose their organisational purpose, values, strategy and culture and to report on their activity (what they have done) not just their policies.

- **Policy and Practice Statement (Statement):** To be a signatory to the Code, entities will be required to submit to the FRC a Statement which:
 - confirms the primary category of Principles and Provisions that best describes the signatory (asset manager, asset owner or service provider);
 - identifies any other Principles or Provisions that are relevant to them; and
 - explains how their stewardship policies and practices enable them to apply all the Principles and comply with the Provisions that are relevant to them.

Signatories will be required to review and confirm or update their Statement each year.

- **Annual Activities and Outcomes Report (the Report):** After one year of being a signatory to the Code, then every 12 months, signatories will be required to submit a Report that details:
 - compliance with their Statement and any departures;
 - activities they have undertaken to implement Provisions in the preceding 12 months, and an evaluation of how well stewardship objectives have been met, and/or have enabled clients to meet theirs;
 - the outcomes achieved.
- **The FRC will require signatories to nominate a named contact for stewardship** both for the regulator and for wider stakeholders. For Code reporting, this is to be subject to the approval of the signatories’ board.
- **Names of signatories to the Code will be published on the FRC website**, with links to the Statement and Report on the signatory’s website.
- **The draft 2019 Code does not include separate Principles of Provisions on disclosure and reporting.** Instead it is a requirement of being a signatory to the Code to publicly report against all relevant Principles and Provisions with reference to the signatory’s particular circumstance and in a manner that enables the reader to understand and evaluate their approach.

Regulatory oversight

The FRC states that it will be devoting more resources to evaluating the quality of disclosure of both policies and activities. It will provide more detailed analysis on the implementation of the Code by: a) more clearly ‘differentiating signatories based on the quality of reporting on their stewardship policies, objectives, activities and outcomes; b) evaluating asset owners’ reported oversight of their investment managers’ implementation of their stewardship; c) evaluating asset managers’ reported stewardship of the assets they manage; and d) evaluating asset managers’ monitoring of the service providers they engage’.

This will be achieved through:



- **An enhanced monitoring regime:** review of signatories' disclosures to ensure that they are providing required disclosures within appropriate timelines and to the required standard. This may include compliance with the reporting requirements of the SRD II.
- **(Possible) disclosure of signatories who demonstrate high reporting standards and those whose implementation and reporting are lagging.**
- **The FRC may also publish thematic reviews** that focus on the quality of reporting against particular Principles, Provisions, or based on signatory category.

FRC Chair Sir Win Bischoff said that the proposed changes set 'both higher expectations for stewardship practice and introduces more rigorous public reporting with a focus on outcomes and effectiveness. We believe the changes proposed put it at the forefront of stewardship internationally.'

Responding directly to criticism made of the 2012 Code in the recent Kingman Review (see: Governance News 16/01/2019) the regulator writes that it understands 'Sir John's main objective is to distinguish clearly between those who execute stewardship well, and those who need to improve, and we believe that the new code, along with an enhanced monitoring regime will achieve this. The draft 2019 Code sets a higher bar for effective stewardship and requires enhanced reporting of activities as well as policies'.

Proposed timeline

Consultation timeline: The deadline for submissions on the proposed changes to the Code is 29 March 2019.

Proposed implementation schedule for the 2019 Code

Action	Timeframe
The 2019 will be published and come into effect. The FRC will begin accepting applications. New applications to the 2012 Code will also cease from this date.	16 July 2019
To be included in the first list of signatories to the 2019 Code, entities will be required to submit a Polity and Practice Statement by 31 July 2019. The FRC will commence 'outreach' on the 2019 Code from July 2019.	31 July 2019
The FRC will: 1. undertake a preliminary evaluation of the quality of the Practice and Policy statements 'and engage with prospective signatories to communicate whether they have been accepted as a signatory' 2. publish a list of signatories to each category on the FRC website, with links to the Practice and Policy statements	Q1 2020
Applications will continue to be accepted and Practice and Policy Statements will be added to the list of 2019 Code signatories on an ongoing basis	Q2 2020 onwards
Signatories must submit an annual Activities and Outcomes Report within 12 months of submitting their Practice and Policy Statement. Signatories are also required to update, or confirm, their Statement remains the same.	31 December 2020
The FRC will evaluate signatories' Activities and Outcomes Reports alongside their previously submitted Practice and Policy Statements then communicate a combined 'score' and how these have been assessed.	Q1 2021
The FRC will publish on the website a 'tiered' list of 2019 Code signatories under each category.	Q2 2021

[Note: Appendix B of the consultation paper, sets out a proposed implementation schedule for the Code]



[Sources: Financial Reporting Council media release 30/01/2019; Proposed Revisions to the UK Stewardship Code 30/01/2019; Summary of proposed changes to the UK Stewardship Code 30/01/2019; Consultation: Proposed Revision to the UK Stewardship Code January 2019; [registration required] The FT 30/01/2019; Reuters 30/01/2019; Bloomberg 30/01/2019]

Related News

Discussion paper on effective stewardship released

The FRC and the Financial Conduct Authority (FCA) also released a discussion paper *Building a regulatory framework for effective stewardship* which is intended to advance the discussion about what effective stewardship should look like, expectations for financial services firms, and how this can be best supported by the UK's regulatory framework.

Discussion closes on 30 April 2019.

[Source: DP19/1: Building a regulatory framework for effective stewardship]

Financial Conduct Authority: Consultation on proposals to improve shareholder engagement

The Financial Conduct Authority (FCA) has released a consultation paper (CP19/7) on proposed regulatory measures to implement the provisions of the amended Shareholder Rights Directive (SRD II) for FCA regulated life insurers and asset managers.

The primary aim of the proposed rules is to enhance transparency of engagement policies and investment strategies across the institutional investment community.

The deadline for submissions is 27 March 2019.

[Source: Consultation Paper CP19/7: Consultation on proposals to improve shareholder engagement January 2019]

State Street has identified culture as a top stewardship priority: 'Given growing investor interest in this area, directors and senior management should be prepared to discuss the management of human capital in the context of corporate culture as a driver of long-term value'

In its annual letter to boards, State Street Global Advisers (State Street) has identified culture as its top engagement priority for the coming year and has called on boards to: a) 'proactively review and monitor' corporate culture; b) evaluate its alignment with strategy and incentive management; c) take 'corrective' action where appropriate.

'We do believe that this [culture] is a material issue that must be addressed by companies and investors. By engaging on this topic in a more rigorous and structured way and by elevating these issues to boards, we believe we can help improve the overall governance quality of listed companies over the long term. As such, you should expect to discuss this issue with our asset stewardship team during their engagements over the next year' State Street writes.

The Letter goes on to say:

- few directors can 'adequately articulate their company's culture or demonstrate how they assess, monitor and influence change when necessary'
- 'flawed culture' has led in some instances to 'high-profile cases of excessive risk-taking or unethical behaviours that negatively impact long-term performance'

The letter includes a suggested framework to assist boards to align their culture and strategy by 1) conducting an analysis to determine whether culture and strategy are aligned; 2) implementing mechanisms to influence and assess progress; and 3) improving reporting that can help directors discuss their role in influencing and monitoring corporate culture.

State Street has reportedly called on Australian companies to increase their engagement efforts

Reportedly, State Street has said that Australian companies tend to engage less with investors outside the annual meeting cycle than their US counterparts on issues such as governance, remuneration and sustainability.



'The overwhelming majority of incoming requests [for meetings with investors] occur right before the shareholder meeting and the primary agenda is remuneration from the company's side,' State Street Asia Pacific head of asset stewardship Ben Colton is quoted as saying, adding that there is scope for companies to increase their levels of engagement.

In the context of remuneration, Mr Colton reportedly suggested that early engagement at the design phase, could potentially assist companies in avoiding second strikes.

[Sources: State Street Global Advisers Annual Letter: 15/01/2019; JDSupra 29/01/2019; [registration required] The AFR 03/02/2019]

What investors want to see in disclosure on board evaluation processes: CII suggests there are seven indicators of 'strong disclosure'

Noting that proxy statements are not always effective in conveying the rigour or results of board evaluation processes or outcomes to investors, The Council of Institutional Investors (CII) has released a report highlighting examples/providing guidance on what their members view as markers of 'strong disclosure'.

What investors want to know

According to the report, investors 'do not expect the board to reveal the specific details of any board or individual director evaluations. Rather, they want to understand the process by which the board approaches the task of continually improving itself'.

Seven indicators of 'strong' disclosure: CII identifies seven elements of the evaluation process that boards should consider and communicate in their disclosure.

1. **'Three tiered review':** An effective board evaluation processes should assess performance at board level, at committee level and the performance of individual directors.
2. **Consideration of peer review:** Investors are looking for evidence the board gave consideration whether to 'augment its process for evaluating individual directors with the ability to anonymously peer review fellow directors' (if they did not in fact use peer review).
3. **Appropriate timing and format:** Boards should actively consider how to improve their evaluation timing and format from year to year and disclosure should communicate how it sets the timing of evaluations.
4. **Evidence of 'follow through':** Effective disclosure lists examples of specific actions taken and changes made internally in direct response to previous evaluations. CII observes that the more specific the disclosure is 'the more confidence investors have that feedback from evaluations translates into concrete action'.
5. **Attention to succession planning:** Investors are looking for evidence of ongoing attention to board composition (especially in terms of board skills) as they look for this information to help inform their voting decisions eg it's suggested that where board evaluation prompts a decision not to re-nominate an incumbent director the board should disclose that it has reached the decision that the director should retire and the skills it is seeking in a new nominee.
6. **Strong independent director leadership:** Investors find it useful when disclosure explains how the lead independent director (or equivalent) filters information and insights across multiple levels and facilitates one-on-one discussions with individual directors as part of a robust evaluation process.
7. **Consideration of the use of third parties and technology to enhance the evaluation process:** Disclosure should indicate whether the board considered the costs and benefits of leveraging independent third parties or technology platforms to enhance the evaluation process

[Sources: Harvard Law School Form on Corporate Governance and Financial Regulation 30/01/2019; CII Research and Education Fund: Board Evaluation Disclosure January 2019]

Corporate Social Responsibility and Sustainability



IOSCO's Growth and Emerging Market Committee is consulting on recommendations related to the development of sustainable finance in capital markets and the role of securities regulators in the area

The International Organisation of Securities Commissions' (IOSCO's) Growth and Emerging Market Committee (GEMC) has released a report for consultation: *Sustainable finance in emerging markets and the role of securities regulators*, proposing 11 draft recommendations that member jurisdictions should consider when issuing regulations or guidance regarding sustainable instruments and additional disclosure requirements of ESG-specific risks.

Among other things, the recommendations propose requirements for disclosure of material Environmental, Social and Governance (ESG) specific risks to enhance transparency.

The proposed recommendations fall into the following categories:

- Integration by issuers and regulated entities of ESG-specific issues in their overall risk appetite and governance (Recommendation 1);
- ESG-specific disclosures and reporting (Recommendation 2);
- Data quality (Recommendation 3);
- Definition of sustainable instruments (Recommendation 4);
- Eligible projects and activities (Recommendations 5 to 9);
- Integration of ESG-specific issues into the investment analysis, strategies and overall governance of institutional investors (Recommendation 10); and
- Building capacity and expertise for ESG issues (Recommendation 11).

The deadline for submissions is 1 April 2019.

[Sources: IOSCO media release 01/02/2019; CR01/2019 Sustainable finance in emerging markets and the role of securities regulators: Consultation Report February 2019]

Sustainability is increasingly accepted by European boards as a critical issue but businesses have a diversity of approaches to the issue according to a new study

A research report by Board Agenda and Mazars in association with INSEAD Corporate Governance Centre: *Leadership in Corporate Sustainability — European Report 2018* reports on how sustainability is being addressed by board members and senior management across Europe, what knowledge they have of sustainability issues and how they are translating this into corporate strategy and action.

Report conclusions

According to the report, European business leaders are increasingly aware of/accept the importance of creating a sustainable business strategy but there is a wide diversity of approaches to the issue. Overall, the authors suggest their findings indicate 'that there is some way to go before stakeholders will be able to see a clear picture. And perhaps, most worryingly, there is a small but significant proportion of businesses where sustainability is simply not on the boardroom agenda'.

Some Key Findings

- 53% say their board sees a solid business case for sustainability and 57% say they aim to meet their obligations. Only a quarter (24%) cite growing pressure from customers
- 73% believe that ignoring sustainability will affect their company's ability to create long-term value
- 73% believe their current reporting approach delivers a comprehensive picture of their sustainability actions to investors and other stakeholders
- One in five (17%) have a dedicated board-level sustainability committee, while two out of five (41%) do not have a separate function within the board with oversight of sustainability, with a similar number saying it rests with another board-level committee

- 59% say their board has a clear understanding of the risks and opportunities of sustainability
- 30% say that everyone on the board has a good understanding of sustainability, with 40% claiming there are enough board members with the right knowledge levels, but 12% say board members struggle
- One-third of respondents claim that sustainability expertise or a sustainability mindset are explicit selection criteria in the appointment of executive and non-executive board members, but 15% disagree.
- One-third agree that sustainability measures are an integral part of the performance measures and compensation of executive members of the board, but half disagree
- 29% say they are aiming to be a 'market leader' in sustainability, 10% say that sustainability does not figure in how they position themselves

[Source: [registration required] Leadership in Corporate Sustainability — European Report 2018]

Meetings and Proxy Advisers

ASIC 2018 Annual AGM Report: ASIC found there was a 'strong display' of shareholder engagement particularly on ESG and remuneration issues

The Australian Securities and Investments Commission (ASIC) has released its annual report on emerging trends from the 2018 AGM season for S&P/ASX 200 listed entities: *ASIC Report 609 Annual general meeting season 2018*.


Some Key Findings

- There was 'a strong display of shareholder engagement' on issues such as environmental, social and governance (ESG) issues and director elections/re-elections.
- Remuneration also remained a key issue for shareholders. More particularly, shareholders voiced concerns about the 'amount, structure and transparency of executive remuneration'.
- The impact of the Financial Services Royal Commission was evident in 'heightened shareholder focus on matters such as social licence to operate and community expectations'. This was the case both where companies and directors were directly involved in the Commission and more generally.

Further Detail

Remuneration

- **12 'strikes' in 2018 (up from 5 in 2017):** ASIC comments that executive remuneration was 'topical this AGM season', with a significant increase in the number of strikes on last year. The average level of support for remuneration reports was lowest in the banking sector (66.5%) as compared with other sectors, with the next lowest being 'retailing' at 85.9%.
- **'Near misses' and second strikes in 2018:** There were no second strikes in 2018. Of the eight companies that were close to a first strike in 2017, four went on to receive a first strike in 2018. ASIC suggests that whether a company received its first strike (or managed to avoid its second strike) turned on whether shareholder concerns in previous year(s) had been addressed.
- **Record 'against' votes:** The report notes that there was an 'upsurge' in the 'magnitude of "against" votes on remuneration reports, with a number of record highs in 2018'. ASIC attributes this to:
 - company underperformance;
 - the remuneration amount (including performance-based payments) and/or how the remuneration is structured (including 'combined' plan incentive structures);
 - conduct issues arising from the Financial Services Royal Commission (see below); and

- 
- shareholders using 'their votes on the remuneration report to demonstrate their discontent with boards more broadly, rather than just on executive remuneration'.
 - **The Financial Services Royal Commission 'cast a long shadow' over the 2018 AGM season** the report states, particularly for companies and directors who were involved in it directly. For example, ASIC found that 'for' votes in the banking sector fell from around 96% in 2017 to around 66% in 2018 which ASIC attributes to conduct issues raised by the Financial Services Royal Commission, and companies' failure to accordingly adjust remuneration practices.

Shareholder engagement, including Environmental, Social and Governance (ESG) issues

- Climate change risk and sustainability emerging were the most frequently raised ESG issues.
- ESG issues received a broader level of support from shareholders in 2018, with the percentage of votes cast 'for' shareholder-requisitioned resolutions on ESG issues rising from 6% in 2017 to 19% in 2018. This suggests that such issues may continue to be raised in years to come.
- Director elections and re-elections persisted as an area where shareholders voiced discontent by 'protest votes', with some material 'against' votes coinciding with high 'against' votes on remuneration.

Other observations

- **Accountability:** ASIC observes that the 2018 AGM season 'highlighted an emerging theme of accountability from boards in some industries' with a number of chairpersons and CEOs using their opening addresses at AGMs to 'acknowledge failings or mistakes made by the company and to commit to improving'.
- **Effectiveness of meetings:** ASIC expressed concern that 11 ASX200 companies continued to decide resolutions by a show of hands rather than by conducting a poll.
- **Continued improvement in female board representation:** The number of women on ASX 200 boards rose marginally from 25% in 2017 to 29% in 2018, the number of women on ASX 100 boards reached 30%.
- **Related party transactions:** In 2018, ASIC saw a 20% reduction in the number of notices of meeting lodged under s 218(1) of the *Corporations Act 2001 Cth*, as compared to 2017. ASIC infers from this that smaller listed companies are placing greater reliance on the arm's length exception in s 210 of the *Corporations Act*.

ASIC Corporate Governance Taskforce: Particular areas of focus

The report also flags that the Corporate Governance Taskforce will review a selection of ASX100 companies to 'closely observe governance practices across the spectrum of large listed companies'.

The Taskforce has three main areas of focus: 1) The role of the board and officers in the oversight and management (respectively) of non-financial risk; 2) board decision making on executive remuneration (including granting/vesting of bonuses); and 3) the adequacy and effectiveness of existing corporate governance disclosures against entities' governance practices.

The Taskforce will report observations (both 'good and bad') and outline ASIC's expectations and recommendations for improvement.

[Source: ASIC Report 609: Annual General Meeting Season 2018 January 2019]



Regulators

ACCC to take on 'super complaints' under Labor? Labor has announced that, if elected, it plans to implement a 'super complaint' function with the ACCC based on the mechanism used by the UK CMA

The Federal Labor Party has said that, if elected to government, it will implement a 'super-complaint' function within the Australian Competition and Consumer Commission (ACCC), based on the mechanism used by the UK Competition and Markets Authority (CMA).

Under Labor's plans, selected peak consumer groups would be 'empowered' to make a super complaint which might involve issues such as energy pricing, credit card surcharges, misleading labelling or unfair terms in small business contracts, to the regulator.

Key Points

According to the fact sheet, issued by Shadow Treasurer Andrew Leigh:

- 'Super complaints' confer a right on specified consumer or small business organisations to make a 'super complaint' to the ACCC.
- In order to constitute a 'super complaint', the complaint must relate to a 'widespread concern or conduct in a market' and must meet other thresholds (evidentiary (such as incidents of anti-consumer conduct), consumer harm or safety risks, anti-competitive conduct, and/or evidence of widespread concern in the public) in relation to information provision.
- The ACCC would be obliged to investigate the matter and publicly respond to the complaint within a specified time. (The fact sheet indicates that Labor plans to consult with stakeholders on appropriate timeframes. The Assistant Treasurer comments that in the UK the CMA must respond to super complaints within 90 days).

[Sources: Shadow Treasurer Andrew Leigh media release 31/01/2019; Factsheet: New supercomplaints policy 31/01/2019]

Post-implementation review of the prudential framework for superannuation: The AIST's submission calls on APRA to establish a new data reporting framework

In its response to the Australian Prudential Regulation Authority's (APRA's) post-implementation review of the prudential framework for superannuation, The Australian Institute of Superannuation Trustees (AIST) has called for APRA to rethink the way in which it collects and analyses superannuation fund data to better enable it to assess fund performance, and delivery of value to members.

'AIST believes that the reporting framework does not presently meet its objectives and APRA needs to change its focus to include members' best interest. Reporting standards do not enable system performance assessment and AIST calls for a comprehensive data and reporting framework to be implemented, with a specification of what is needed to benchmark system performance' AIST writes.

Among other things, the submission argues that:

- The current reporting standards do not meet their objectives because the current reporting framework 'has not delivered benchmarking of system and fund performance, enabled the identification of the impact of conflicts of interest, or whether members could have received better value'.
- Currently the data collected is 'not accurate, credible, coherent or capable of being easily interpreted given the substantive lack of comparability and transparency. Various legislative and regulatory carve outs and lack of clarity impact on accuracy' AIST writes. In addition, the AIST contends that the data is not timely or easily accessible or 'useful for industry'. The lack of an appropriate data reporting framework may also impact the effective implementation of proposed reforms, such as the implementation of the outcomes test, the submission argues.
- According to the submission, AIST members have also raised concerns regarding APRA's own understanding of data requirements, which it suggests has made it difficult for funds to gain a clear interpretation of what is required from APRA staff.

- The submission argues that had APRA gathered and analysed appropriate data, concerns identified by the Financial Services Royal Commission could have been identified sooner by the regulator. This highlights the need, the submission argues, to APRA to collect additional data.
- Among other things, the submission recommends that:
 - a data reporting framework should be developed
 - APRA should gather Choice sector data
 - the data needed to benchmark fees and performance needs to be specified
 - an independent agency such as the Australian Bureau of Statistics should analyse and benchmark both MySuper and Choice sector data and report to APRA

[Note: APRA's implementation timeline, for acting certain of the Financial Services Royal Commission (FSRC) recommendations, [states](#) that APRA will release its report on the post-implementation review of the superannuation prudential framework will be released in Q2 2019. APRA's response to the FSRC recommendations is discussed in a separate post below.]

[Sources: AIST submission: Post-Implementation Review of the Prudential Framework for Superannuation: Data and Reporting Framework 25/01/2019; [registration required] The SMH 03/02/2019; SuperReview 29/01/2019]

Financial Services

New Zealand | The New Zealand Financial Markets Authority (FMA) and Reserve Bank of New Zealand (RBNZ) have jointly released their review into the conduct and culture of NZ life insurers

The New Zealand Financial Markets Authority (FMA) and Reserve Bank of New Zealand (RBNZ) have jointly released their review into the conduct and culture of life insurers in New Zealand. The report is the second phase of a broader review into the conduct and culture of the New Zealand's financial institutions (the first phase was the review of retail banks) which was prompted by the Australian Financial Services Royal Commission.

Overall, the regulators comment that there is 'extensive weaknesses in life insurers' systems and controls, with weak governance and management of conduct risks across the sector and a lack of focus on good customer outcomes'. They add that they consider there is a 'serious risk of further conduct issues arising'.

Some Key Findings

According to the regulators, the review did not find 'widespread cases of misconduct on the part of life insurance companies'. However it did identify 'several instances of poor conduct' and a 'small number of cases of potential misconduct (ie breaches of the law)' that are now subject to investigations by the appropriate regulator.

The report adds that some of the 'issues and themes' identified are similar to those highlighted by the Australian Financial Services Royal Commission, though on a 'smaller scale'.

More particularly, the regulators found:

- Limited evidence of products being designed and sold with good customer outcomes in mind
- Lack of focus (on the part of some insurers) on assessing a product's ongoing suitability for customers
- A risk that existing sales incentives structures incentivise sales over good customers outcomes
- Lack of oversight (by insurers) over intermediaries in the context of the sale of products, advice, and customer outcomes
- Generally poor remediation of conduct issues with insurers slow to respond to issues and in some cases not sufficiently remediating them

Review Recommendations



The Review includes a number of recommendations concerning:

- the role of boards in driving change and the need for boards to take a leadership role in this respect
- the need for insurers to exercise 'greater oversight' over how intermediaries are selling and managing insurance
- recommendations in relation to product design, training and support (including, among others, that insurers should proactively encourage their customers to consider whether their insurance policy remains suitable)
- recommendations to ensure appropriate systems and processes for resolving customer complaints are in place and that formal remediation policies and processes are also in place.
- recommended changes to incentive structures including:
 - the removal or substantial revision of incentives linked to sales for frontline sales people and 'all layers of management'
 - review of commission structures and volume bonuses for intermediaries
 - changes to qualifying criteria for 'soft commission' to ensure they mitigate 'conflicts of interest and incentivise advisers to improve customer outcomes rather than just reward them for the volume or value of products sold'
 - requirement for Authorised Financial Advisers to disclose all commissions to customers — 'we expect insurers to encourage all intermediaries to disclose this information'

Implications for general insurers

The report states that 'all insurance sectors should be actively considering conduct risk within their business'. The report adds that 'given the similarities between life and non-life insurance, it is possible that the vulnerabilities identified in this report may exist across the broader insurance industry. We expect all insurers to assess their conduct and culture governance frameworks, and consider and act on all relevant recommendations in this report'.

Next steps

- All 16 life insurers who were included in the review will receive individual feedback.
- By 30 June 2019, each insurer will need to provide an action plan that the regulators will review, including how they will address incentives based on sales volumes for internal staff and commissions for intermediaries. Regular reporting on progress and implementation will be required.

[Sources: New Zealand Financial Markets Authority media release 29/01/2019; Life Insurer Conduct and Culture: Findings from an FRM and RBNZ Review of conduct and culture in New Zealand Life Insurance]

Treasury Review into Initial Coin Offerings (ICOs): Issues paper released for consultation

Treasury has released an issues paper for consultation as part of its review into Initial Coin Offerings. Views are sought on a range of issues including the following.

- The clearest way to define ICOs and different categories of tokens (to provide greater clarity/certainty on the application of regulatory frameworks)
- Opportunities and risks associated with ICOs
- The appropriateness (or not) of the current regulatory framework and whether changes are needed to manage the associated risks as well as enable pursuit of opportunities
- The appropriateness (or not) of the current tax treatment of ICOs

Timeline: The deadline for submissions is 28 February 2019.

[Sources: Treasury media release 31/01/2019; Initial Coin Offerings Issues Paper January 2019; Assistant Treasurer Stuart Robert media release 31/01/2019]



As a signatory to the Global Financial Innovation Network (GFIN), ASIC is inviting applications from firms to be part of a pilot to test innovative financial products, services or business models across more than one jurisdiction

The Australian Securities and Investments Commission (ASIC) recently announced the launch of the Global Financial Innovation Network (GFIN), a group of 28 international organisations (including ASIC) committed to supporting financial innovation in the interests of consumers.

GFIN is inviting applications from firms to be part of a pilot to test innovative financial products, services or business models across more than one jurisdiction.

The deadline for applications to take part in the pilot is 28 February. Firms must meet the eligibility requirements of all the jurisdictions in which they would like to test. In Australia, that would mean meeting the eligibility criteria under ASIC's regulatory sandbox licensing exemption.

Joining the GFIN? In addition the GFIN has finalised the terms of reference for governance and membership of the group. The GFIN would also 'welcome' formal expressions of interest from regulators and international organisations interested in joining. There is no deadline for these applications.

[Source: ASIC media release 01/02/2018]

Buy now pay later update | Licensing requirements for debt management firms? AFCA's submission to the Inquiry calls for a new framework to regulate debt management firms, including licensing requirements

On 24 January the Australian Financial Complaints Authority (AFCA) appeared at the Senate Inquiry into credit and financial services targeted at Australians at risk of financial hardship.

AFCA suggested, in line with its written submission, that:

- A new framework be established to regulate debt management firms, including licensing requirements.
- Debt management firms in Australia should be required to be members of AFCA to ensure consumers with complaints against these firms have access to 'free and timely dispute resolution'.
- Consideration be given to the introduction of an enforceable obligation for financial firms to treat consumers fairly. This obligation should apply to all businesses operation in the financial sector. AFCA suggests that the UK-based Financial Conduct Authority's Principles for Businesses could be used as a model for reforms imposing the standard.
- The establishment of a compensation scheme of last resort.
- Government, industry and the community sector should work together to develop a sustainable funding model to provide access to financial counselling services. AFCA suggests consideration be given to following an approach taken overseas, where an industry levy funds financial counselling.
- AFCA would welcome the passage of the proposed small amount credit contract and consumer lease legislation 'as this would strengthen consumer protection and ensure the standards required of firms participating in this sector are clear'.

[Note: The [National Consumer Credit Protection Amendment \(Small Amount Credit Contract and Consumer Lease Reforms\) Bill 2018](#) was introduced into the House of Representatives on 22 October 2018 and is at second reading stage.]

[Sources: AFCA media release 25/01/2019; AFCA's submission to the inquiry by Senate Economics References Committee]

Superannuation reform Bill update: Treasury Laws Amendment (2018 Measures No 4) Bill passed both houses on 12 February

[Treasury Laws Amendment \(2018 Measures No. 4\) Bill 2018 passed both houses](#) on 12 February.



In his announcement acknowledging the passage of the legislation, Assistant Treasurer Stuart Robert said that it gives the Australian Taxation Office (ATO) the information and tools it needs to identify and prosecute employers who are not paying super for their employees.

Mr Robert described the legislation as 'the most comprehensive action any Government has taken to address non-compliance with superannuation guarantee law since its introduction in 1992'.

[Sources: Assistant Treasurer Stuart Robert media release 12/02/2019]

The Superannuation Complaints Tribunal Q4 2018 newsletter reports an uptick in the volume of complaints, the largest complaint category continues to be death benefits

The Superannuation Complaints Tribunal (SCT) released its Q4 2018 newsletter. The SCT accepted its last superannuation complaint on 31 October 2018 and will now focus on resolving existing complaints. SCT Chair Helen Davis said that the transition to AFCA has 'gone well' although the SCT is still occasionally receiving complaints that should now be going to AFCA.

Q4 2018

- The SCT writes that it was the 'biggest month of complaints' ever received, a 47% increase on the month prior and a 76% increase on the previous year (October 2017).
- The largest single complaint category was death benefits which has been the case 'almost since inception' of the SCT. The percentage of complaints resolved in this category rose (32.4% in Q4, up from 24.4% in Q3).
- In Q4 2018, the majority of death benefit distribution complaints were resolved following a conciliation conference (32.2% of all resolved death benefit complaints) either because the complaint was withdrawn or because an agreement is reached between the parties.
- 22.8% of all resolved death benefit complaints in Q4 2018 were resolved with a determination by the Tribunal, and in 70.6% of these determinations the Tribunal affirmed the decision of the trustee.

[Source: SCT Quarterly Q4 2018]

Enforcing the terms of its Enforceable Undertaking: ASIC has required CFPL to immediately stop charging/receiving ongoing service fees and not to enter into any new ongoing service arrangements

The Australian Securities and Investments Commission (ASIC) has issued a statement announcing that it has required Commonwealth Financial Planning Limited (CFPL) to immediately stop charging or receiving ongoing service fees from its customers, and not enter into any new ongoing service arrangements.

The regulator said that this action followed CFPL's failure to meet the deadline for providing certain information as required under an Enforceable Undertaking (EU) entered into with ASIC in April 2018 in relation to CFPL's fees for no service conduct.

Further detail

ASIC states that CFPL did not provide (by the 31 January deadline):

- an 'acceptable' attestation from the CBA's 'accountable person' under the Banking Executive Accountability Regime (BEAR) as to CFPL's remediation program and the adequacy of CFPL's systems, processes and controls; and
- a Final Report from the independent expert (Ernst & Young) on whether CFPL had taken reasonable steps to remediate customers impacted by CFPL's fees for no service conduct and on the adequacy of CFPL's systems, processes and controls.

According to ASIC, on 31 January 2019, EY issued its second report under the EU, identifying further concerns regarding CFPL's remediation program and its compliance systems and processes. On the same day, CBA's accountable person also provided a written update to ASIC on the remediation program and work being done in relation to CFPL's systems, processes and controls. However, 'having regard to the



concerns raised by the independent expert and the contents of CBA's written update, ASIC considered that the notification did not meet ASIC's requirements under the EU for an acceptable attestation'.

As a result, ASIC said its requirement under the EU that CFPL stop charging or receiving ongoing service fees and not enter into any new ongoing service arrangements, was triggered.

ASIC states that this requirement will continue until CFPL is able to satisfy it that all of the outstanding issues have been remedied.

ASIC adds that CFPL has confirmed that it is complying with the requirement to stop entering into new ongoing service agreements and to cease charging existing clients fees under these agreements. CFPL has also informed ASIC that it is now in the process of transitioning its ongoing service model to one whereby customers are only charged fees after the relevant services have been provided.

[Source: ASIC media release 04/02/2019]

In Brief | Banking System Reform (Separation of Banks) Bill 2019: Senator Pauline Hanson has introduced a private member's Bill which proposes, among other thing, to 'end vertical integration'

[Source: Banking System Reform (Separation of Banks) Bill]

In Brief | APRA has announced it has licensed Lutheran Laypeople's League of Australia as an authorised deposit-taking institution (ADI) under the Banking Act 1959 (Cth)

[Source: APRA media release 01/02/2019]

In Brief | FASEA Code of Ethics standard finalised: The Financial Adviser Standards and Ethics Authority (FASEA) has registered its Code of Ethics for financial planners and advisers. The obligation to comply with the Code 'applies on and from' 1 January 2020

[Sources: FASEA media release 11/02/2019; Financial Planners and Advisers Code of Ethics 2019; Explanatory statement]

Risk Management

ASIC update on Brexit planning, firms with global operations encouraged to review their AFS licensing arrangements

The Australian Securities and Investments Commission (ASIC) has said it is 'carefully monitoring' developments in the UK and has been liaising closely with the UK Financial Conduct Authority (FCA), the Bank of England (BoE), other Australian financial authorities, as well as other regulated stakeholders 'to identify and plan for potential Brexit-related impacts' including contingency planning in the event of a 'no deal' scenario.

The statement adds that ASIC will continue to monitor developments post-Brexit as intended and unintended consequences become apparent and that it is seeking to 'enhance' its cooperation with UK financial regulators post-Brexit as functions and supervisory powers that currently with EU regulators shift back to UK regulators.

ASIC Commissioner Sean Hughes said, 'ASIC is well placed to manage the impacts arising in a "no deal" scenario. We have been working closely with the UK's financial regulators and our aim is to limit disruption to Australian financial services and our markets.'

ASIC Commissioner Sean Hughes also encouraged firms with global operations to review their AFS licensing arrangements: 'In view of the Brexit date of 29 March 2019, we expect firms to have adequate contingency measures to mitigate the potential implications of Brexit for their operations and importantly, to ensure they have in place appropriate AFS licensing arrangements to provide services in Australia.'

[Source: ASIC media release 08/02/2019]



Losing the fight against corruption? Most countries are failing to control corruption, according to the latest corruption perceptions index from Transparency International

Transparency International's *Corruption Perceptions Index 2018* ranks 180 countries and territories by their perceived levels of public sector corruption according to experts and businesspeople. The index uses a scale of zero to 100, where zero is 'highly corrupt' and 100 is 'very clean'.

The latest report has found that 'the continued failure of most countries to significantly control corruption is contributing to a crisis in democracy around the world'.

Some Key Findings

- Globally, more than two-thirds of countries scored below 50, with an average score of 43.
- In the last seven years, only 20 countries significantly improved their CPI scores, including Estonia, Senegal, Guyana and Côte D'Ivoire. 16 countries significantly decreased their scores, including Australia, Chile, Malta, Hungary and Turkey.
- The top seven countries in the Corruption Perceptions Index 2018 consist of the four Nordic nations – Denmark, Finland, Sweden and Norway – plus New Zealand, Singapore and Switzerland. All score between 84 and 88 points out of 100 on the index.
- The average score for the Asia Pacific region was 44, which is unchanged over the past three years. Compared to other regions, Asia Pacific is on par with the Americas (average score: 44) in its lack of progress and behind Western Europe and the European Union (average score: 66).
- In the Asia Pacific region, New Zealand scored 87, making it the 'cleanest' country in the region (and the second in the world after Denmark which ranked 88). The next 'cleanest' was Singapore (85) followed by Australia (77). Australia's score is unchanged from 2017.
- With a score of 71 (down from 75 in 2017), the US has dropped out of the top 20 nations for the first time since 2011.
- The bottom countries overall were Somalia, Syria and South Sudan with scores of 10, 13 and 13, respectively.

[Source: Transparency International Corruption Perceptions Index 2018 29/01/2019]

Monitoring and overseeing culture: Time for businesses to consider creating new executive positions such as chief ethics officer?

In a statement issued in the lead up to the release of the Financial Services Royal Commission's Final Report, Governance Institute of Australia CEO Megan Motto said the evidence of misconduct uncovered at the Financial Services Royal Commission is a 'wake-up call' for the industry and the wider business community.

'The royal commission has highlighted just how badly we need to open up a discussion on how we measure business success, especially in terms of key intangibles such as business culture and ethical conduct. How do we create new ways of incentivising our business leaders to perform, beyond the current obsession with profit-based metrics?'

Ms Motto went on to suggest that consideration should be given to following the approach adopted in other jurisdictions 'Overseas we've seen companies tackling these tough questions by creating new executive positions, such as a chief ethics officer. These roles can provide independent feedback loops to the board, standing outside of traditional executive reporting lines, and working closely with auditors and regulators to ensure the company is compliant. Is it now time for the industry to consider these kinds of changes here too?'

[Sources: The Governance Institute of Australia media release 1/02/2019; MyBusiness 01/02/2019]



Not for Profit Governance Principles (2nd edition) released

The Australian Institute of Company Directors (AICD) recently released a second edition of the Not for Profit Governance Principles.

- The Principles are primarily for directors and executives
- The Principles are complementary to the Australian Charities and Not-for-profits Commission Governance Standards, and are intended to be voluntary in application. The AICD suggests users adopt an 'if not, why not' approach to reporting.
- The Principles provide a framework for NFPs and charities to consider good governance practices, including the board's roles and responsibilities, managing conflicts of interest, organisational culture, stakeholder engagement and risk management. The second edition provides greater clarity for NFP directors on what good governance looks like, to help support and strengthen governance practice in the sector.

[Sources: AICD media release 30/01/2019; The Not-for-Profit Governance Principles]