

CORPORATE ADVISOR AUTUMN EDITION 2024

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INTRODUCTION

In this issue of Corporate Advisor, we explain 14, financial-reporting, corporate-governance regulatory topics of crucial importance to CFO's and Directors.

ASIC's focus areas are like prior years – impairment and asset values, provisions, events occurring after year-end and before completing financial reports, disclosures in the reports and operating and financial reviews. What gives them a different complexion is the current uncertain market and economic conditions.

Don't forget AASB 17 – it's about insurance contracts. Its remit extends beyond insurance companies. Know what an insurance contract is – account and disclose accordingly.

We also need to bear in mind the commission's announcements during the year penalties for non-lodgement of accounts, failure to hold annual general meetings, regulatory priorities and greenwashing.

Lifting the eyes a little into 2024, we see substantial developments in climate change likely to be finalised by 30 June – the exposure draft legislation *Treasury Laws Amendment Bill 2024: Climate-related financial disclosure* and proposed sustainability standards released by AASB ED SRI 1 *Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information* to propose climate-related financial-disclosure requirements.

Compliance risks are still showing up in wages underpayment and cyber-security, in addition to the AI challenge.

If you require assistance, reach out to your Hall Chadwick engagement partner.



Directors must shoulder responsibility, says ASIC

By Anthony Travers, Partner, Hall Chadwick (NSW)

ASIC has emphasised that directors were primarily responsible for the quality of a financial report.

This included ensuring that management produced quality and timely financial information for audit that was supported by robust position papers with appropriate analysis and conclusions referencing relevant accounting standards.

Companies must have appropriate processes, records, and analysis to support information in a report, the commission stressed.

Appropriate experience and expertise should be applied to reporting and auditing, particularly in more difficult and complex areas such as asset values, provisions, and other estimates.

The circumstances in which judgements on accounting estimates and forward-looking

information had been made and their bases should be properly documented at the time and disclosed as appropriate.

Operating and financial reviews should complement financial reports and tell the story of an entity's performance. Underlying drivers of results and financial positions should be explained as well as risks, management strategies and prospects. Forward-looking information should have a reasonable basis and the market should be updated through continuous disclosure if circumstances change.

Audit fees should be reasonable and have regard to increased auditors' costs and extra effort required in judgement areas.

ASIC probes bring \$215m in adjustments

By Drew Townsend, Partner, Hall Chadwick (NSW)

Adjustments totaling \$215million have been made to ASX-listed companies and big entities following surveillance by the ASIC.

The changes are reflected in ASIC's integrated financial-reporting and audit-surveillance program for 12 months to 30 June.

Report 774 *Annual financial reporting and audit surveillance report 2022–23* outlines findings related to insufficient disclosure of material business risks in operating and financial reviews, impairment of assets, revenue recognition, and other disclosures.

ASIC reviewed 180 financial reports by ASX-listed and other big entities as well as 15 related audit files from 1 July 2022 to 30 June.

ASIC's assessments revealed that preparers and auditors of financial reports need to focus on accounting for non-financial assets, asset values, revenue recognition, and disclosure of material business risks.

The commission has provided the audit findings to 11 company directors to encourage constructive discussions between companies and auditors to improve the quality of reports and audits.

ASIC executive director for regulation and supervision Greg Yanco, said he expected preparers, directors, and auditors to focus on the

commission's areas of concern.

'Under our integrated financial reporting and audit surveillance program, ASIC targets financial reports for review using risk-based criteria,' said Mr Yanco.

'These include where we have identified potential issues in revenue recognition or asset valuation.

'From this pool of reports, we then select audit files to review where we see the potential for a report to be materially incorrect.

'This approach acknowledges that everyone in the financial-reporting chain, from report preparers to directors to auditors, have a role to play in improving the quality of financial reports and audits.

'ASIC will publicly report on the issues we find in financial reports and audit files to promote high-quality financial reporting and continuous improvement in audit quality. Where we see significant deficiencies in financial reports and audit files, we will refer those companies and auditors to ASIC's enforcement team.'

ASIC collects more than \$700k in fines

By Chris Nicoloff, Partner, Hall Chadwick (WA)

ASIC prosecuted thirty-six companies and secured more than \$700,000 in penalties for failing to lodge financial reports, hold annual general meetings, and maintain the required number of directors and resident directors.

Three of ASIC's prosecutions resulted in fines of more than \$100,000.

Asset management firm ALT Financial Group Ltd was fined \$123,000 for failing to lodge annual reports and hold AGMs between 2018 and 2021. It also failed to maintain the minimum number of directors.

TV2U International Ltd, a corporate telecommunications company, was fined \$110,000 for failing to lodge annual financial reports for the 2021 and 2022 financial years, half-year financial reports for 31 December 2020 and 2021, failing to report to members and hold an AGM in 2021, failing to have a company secretary, and failing to maintain the required number of directors and resident directors.

Resources exploration business RMG Ltd was convicted and fined \$105,000 for failing to lodge three annual financial reports between 2020 and 2022, a half-year financial report for 31 December 2020, failing to have a company secretary, and failing to maintain the required number of directors and resident directors.

ASIC also secured significant penalties against Adgex Ltd, which was fined \$83,000 for failing to lodge reports or hold AGMs from 2019 to 2021 and maintain the required number of directors and resident directors. Eleven of the ABM Group's companies were fined \$69,000.

The commission reminded directors that 'financial reports provide shareholders, creditors, and the public with important information, enabling them to make informed decisions [...]. It is crucial that disclosing entities lodge their financial reports in a timely manner.'

Prioritise Cyber Security, says ASIC

By Nicki Shen, Partner, Hall Chadwick (WA)

The Australian Cyber Security Centre estimated that cyber-crime cost Australia \$42 billion in 2021. ASIC has called on organisations to prioritise cyber security after its report into corporate Australia's cyber situation identified significant gaps.

Spotlight on cyber: Findings and insights from the cyber pulse survey 2023 summarises the commission's results.

The survey measured participants' ability to govern and manage organisational-wide cyber risks, identify, and protect information assets that support critical services, and detect, respond to, and recover from cyber-security incidents.

The survey's results have exposed deficiencies in the risk management of critical cyber capabilities, indicating that organisations are reactive rather than proactive when it comes to managing cyber security.

Survey result highlights include:

- 44 per cent of participants did not manage third-party and supply chain risks
- 58 per cent had limited or no capability to protect confidential information adequately
- 33 per cent did not have a cyber incident response plan, and
- 20 per cent did have a cyber-security standard.

ASIC chair Joe Longo said, 'For all organisations, cyber security and cyber resilience must be a top priority. ASIC expects this to include oversight of

cyber-security risk throughout the organisation's supply chain – it was alarming that 44 per cent of participants are not managing third-party or supply-chain risks. Third-party relationships provide threat actors with easy access to an organisation's systems and networks.'

Participating organisations indicated well-developed capabilities in identity and access management, governance and risk management, and information asset management, big organisations consistently self-reporting more mature cyber capabilities.

Due to competing demands for limited human and financial resources, small organisations lagged in third-party risk management, data security, consequence management, and adoption of industry standards than larger entities.

There is a need to go beyond security alone and build up the ability to respond to and recover from an incident. Plans are not enough. They must be tested regularly. Cyber risks need constant reassessing.

'An effective cyber-security strategy and governance and risk framework should help identify, manage, and mitigate cyber risks to a level that is within the risk tolerance of senior leadership and boards,' said Mr Longo.

ASIC announces 2024 enforcement priorities

By Stewart Thompson, Partner, Hall Chadwick (NSW)

ASIC has announced its enforcement priorities for 2024, including putting the superannuation industry under the microscope.

ASIC will examine the industry's member-services failures and misconduct relating to the erosion of superannuation balances.

New priorities relating to insurance-claims handling, compliance with financial hardship obligations and the reportable-situation regime have also been added. ASIC will also be acting against misconduct around used-car financing for vulnerable consumers.

Gatekeepers such as auditors, registered liquidators, and financial services and credit licensees who do not comply with legal obligations will also be examined.

'We are taking matters to court and pursuing higher penalties than ever before,' said ASIC deputy chair

Sarah Court.

'In delivering [...] our priorities this year, we took action against some of Australia's biggest corporations. And we are not deterred from taking challenging cases where legal outcomes are not guaranteed.

'We must test the scope of the laws that parliament has enacted to protect market integrity, consumers, and investors, [and] to ensure those laws have a wide protective application. Where the law is complex, new, or open to interpretation, we are not doing our job if we do not fully explore its reach.'

Greenwashing remains under the commission's spotlight, as are distribution obligations and failures of governance and by directors.



Regulators' red light for greenwashing

By Mark Delaurentis , Partner, Hall Chadwick (WA)

ASIC's enforcement actions in response to concerns about greenwashing range from warning letters and infringement notices to Federal Court action.

Greenwashing matters that ASIC is currently pursuing broadly allege misleading and deceptive conduct.

Future enquiries may move to examining licence obligations, directors' and officers' duties, and a range of other obligations. New focus areas include:

- Net-zero statements and targets
- Use of terms such as 'carbon neutral', 'clean' and 'green', and
- The scope and application of investment exclusions and screens.

Where public statements are made that assert aspirational environmental positions with a sound basis and supported by business plans and investments, ASIC is unlikely to have concerns.

When statements are made in marketing campaigns designed to encourage investment and promote products with little substance to back up assertions or substantiate how the transition will be achieved, ASIC is likely to request more information.

ASIC has published information sheet 271 *How to avoid greenwashing when offering or promoting sustainability-related products*.

While on the topic, the Australian Competition

& Consumer Commission has published eight principles to help businesses ensure that any of their environmental marketing and advertising claims are clear, accurate, and do not mislead consumers.

Making environmental claims: A guide for business sets out the ACCC's view of good practice when making environmental claims. It also details obligations under Australian Consumer Law.

The eight principles are:

- Make accurate and truthful claims
- Have evidence to back up your claims
- Don't hide or omit important information
- Explain any conditions or qualifications on claims
- Avoid broad and unqualified claims
- Use clear and easy-to-understand language
- Visual elements should not give the wrong impression, and
- Be direct and open about your sustainability transitions.

'Misleading environmental and sustainability claims continue to be an enforcement and compliance



priority for the ACCC,' said ACCC acting chair Catriona Lowe.

'[We] have several active investigations underway.

'Our final guidance is intended to improve compliance by helping businesses make meaningful and truthful claims that meet their obligations under the Australian Consumer Law.

'Environmental claims are often technical and can be difficult for businesses to communicate clearly. By following the principles in our guidance, businesses can more confidently make meaningful claims that consumers can understand and trust.

'It is important for businesses to consider whether they are exaggerating the environmental benefits of their product or services and whether they have a reasonable basis to make the claims, otherwise they risk breaching the [law].'

The ACCC will release further guidance for businesses and consumers on emissions and offset claims as well as the use of trust marks. The commission will also develop guidance to help consumers assess and rely on environmental claims.

Governance Institute guides on greenwashing

By Doug Bell, Partner, Hall Chadwick (WA)

The Governance Institute of Australia has released guidance on how to avoid greenwashing.

Greenwashing: a governance perspective responds to several recent, high-profile anti-greenwashing moves made by ASIC and ACCC over allegedly misleading claims by businesses.

A European Commission review of corporate websites found that 42 per cent of environment-related claims were exaggerated, false, or deceptive, and an ACCC 2022 review of Australian corporate

websites found that 57 per cent of businesses made concerning claims about their environmental credentials.

The guide examines the extent of greenwashing in Australia, the legal and regulatory environment, and the risks and guiding principles of how to manage environmental disclosures and statements.



New bill proposes obligatory climate risks

By Clive Massingham, Partner, Hall Chadwick (QLD)

Treasury released in January an exposure draft legislation *Treasury Laws Amendment Bill 2024: Climate-related financial disclosure* that seeks to amend parts of the ASIC and Corporations acts.

The new act would introduce mandatory requirements for large businesses and financial institutions to disclose their climate-related risks and opportunities. Comments sought by 9 February.

The bill requires entities that lodge financial reports under Chapter 2M of the *Corporations Act* to meet certain minimum-size thresholds and/or have emissions-reporting obligations under the NGER scheme to make disclosures relating to climate in accordance with AASB sustainability standards.

The amendments would be phased in over four years.

Climate disclosures would be subject to assurance requirements like those in force for financial reports. They would require entities to obtain an assurance report from their financial auditor. The extent and level of assurance would be set out in standards developed by the AUASB.

First annual reporting periods starting on or after	Large entities and their controlled entities meeting at least <u>two of three</u> criteria:			National Greenhouse and Energy Reporting (NGER) Reporters	Asset Owners
	Consolidated revenue	EOFY consolidated gross assets	EOFY employees		
1 July 2024 Group 1	\$500 million or more	\$1 billion or more	500 or more	Above NGER publication threshold	N/A
1 July 2026 Group 2	\$200 million or more	\$500 million or more	250 or more	All other NGER reporters	\$5 billion assets under management or more
1 July 2027 Group 3	\$50 million or more	\$25 million or more	100 or more	N/A	N/A

Climate-related trends disclosed

By Drew Townsend, Partner, Hall Chadwick (NSW)

The AASB and the AUASB have published updated research in *Trends in climate-related disclosures and assurance in the annual reports of ASX-listed entities*. It builds on the previously issued *Climate-related disclosures and assurance in the annual reports of ASX-listed companies* by extending the 2018-2021 sample period to 2022.

The report identifies several trends in climate-related reporting and assurance, including:

- Entities are increasingly disclosing climate-related information in their annual reports and governance statements
- Climate-sensitive industries continue to be more likely to disclose climate-related information with extant reporting standards and/or guidelines
- Most disclosures are outside financial statements and therefore not subject to audit
- An increase in the number of disclosers referencing Task Force on Climate-Related Financial Disclosures recommendations, including reporting against the 'four pillars'
- An increase in the amount of climate-related content in key audit matters, and
- Limited assurance remains the dominant level of assurance being provided about climate-related information. Only three instances where both limited and reasonable assurance were provided.



Proposed sustainability standards released

By Steven Nguyen, Partner, Hall Chadwick (VIC)

The AASB has released ED SRI 1 Australian Sustainability Reporting Standards - Disclosure of Climate-related Financial Information to propose climate-related financial-disclosure requirements.

The exposure draft includes three draft Australian Sustainability Reporting Standards (ASRS standards):

- ASRS 1 *General Requirements for Disclosure of Climate-related Financial Information*, developed using IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* as the baseline, but with a limitation to climate-related financial disclosure
- ASRS 2 *Climate-related Financial Disclosures*, developed using IFRS S2 *Climate-related Disclosures* as the baseline, and
- ASRS 101 *References in Australian Sustainability Reporting Standards*, developed as a service standard that would be updated periodically to list relevant versions of any non-legislative documents published in Australia and foreign documents that are referenced in ASRS standards.

Starbucks back-pays \$4.5m

By Michael Hilgrove, Partner Hall Chadwick (WA)

Starbucks Coffee Australia Pty Ltd has back-paid staff in Sydney, Melbourne, Brisbane, and the Gold Coast more than \$4.5 million and has entered an enforceable undertaking with the Fair Work Ombudsman.

The ASX 100 company self-reported its non-compliance in 2020 after becoming aware of underpayments while conducting a payroll-systems review.

Most of the underpayments were the result of Starbucks failing to pay part-time staff correct overtime entitlements under the *Fast Food Industry Award 2010* and *Fast Food Industry Award 2020*.

Starbucks failed to comply with a requirement to have written agreements specifying the regular workdays and hours that made up each part-time employee's 'ordinary hours.' This led to the company's often failing to recognise when part-time employees were entitled to overtime.

Some part-time employees were also underpaid annual-leave and public-holiday entitlements.

A smaller number of full-time store managers were also underpaid because their annual salaries were less than minimum award entitlements, given the significant amounts of overtime and weekend work they performed.

Starbucks has made payments of \$4.57 million – including more than \$4.34 million in wages and

entitlements, more than \$180,000 in interest and more than \$40,000 in superannuation – to 2427 current and former employees underpaid between 2014 and 2020.

FWO Anna Booth said an undertaking was appropriate because Starbucks had cooperated and demonstrated a strong commitment to rectifying underpayments, including devoting significant resources to engaging independent experts to oversee its rectification.

'Under the enforceable undertaking, Starbucks has committed to implementing stringent measures to ensure workers are paid correctly. These measures include engaging, at the company's own cost, audits of its compliance with workplace laws over the next two years,' Ms Booth said.

'This matter demonstrates how important it is for employers to place a high priority on their workplace obligations. For Starbucks, a failure to have written agreements in place for part-time staff and a set-and-forget approach to paying some full-time staff on annual salaries resulted in significant underpayments and rectification costs.'

'Employers need to be aware that taking



enforcement action to protect young workers and improve compliance in the fast food, restaurant, and café sectors are priorities for the FWO.'

Starbucks must make a \$150,000 contrition payment to the commonwealth.

Starbucks is also required to provide the FWO with evidence of new systems it has put in place to ensure future compliance, commission workplace-relations training for payroll and management staff, write to affected staff to apologise, and make corporate-governance improvements.

Brownport Almonds back-pays \$500k

By Mark Taylor, Partner, Hall Chadwick (QLD)

One of Australia's biggest almond growers Brownport Almonds Pty Ltd has back-paid staff more than \$500,000 and signed an enforceable undertaking with the FWO.

Trading under the Bright Light brand, the company operates a farm and processing facility in Hattah in Victoria's north-west.

The FWO investigated the company's compliance with workplace laws in May 2021 after receiving requests for help from workers. During the investigation, inspectors determined that Brownport had been misclassifying them under the Horticulture Award, leading to underpayments.

In response, Brownport conducted a payroll audit covering 2016 to 2021 and earlier this year reported to the FWO that it had underpaid 197 current and former employees a total of \$501,511, including superannuation.

Underpayments followed incorrect job classification under the award and flat rates of pay. Underpaid employees had been classified and paid at level 1 despite being entitled to higher pay rates for higher-classification duties.

Employees were underpaid minimum hourly rates and failed to be paid penalties for working afternoon and night shifts, public holidays, overtime, and allowances. Brownport also failed to make and

keep proper records of employees' overtime hours.

The company has already back-paid most employees and has undertaken to make interest payments to affected employees at 6.1 per cent a year.

Under the undertaking, the company must also make a \$50,000 contribution payment to the commonwealth.

Fair Work Ombudsman Anna Booth said an EU was appropriate as the company had readily cooperated with the FWO's investigation and demonstrated a strong commitment to rectifying underpayments.

'Under the enforceable undertaking, Brownport Almonds has committed to implementing stringent measures to ensure all its workers are paid correctly. These measures include commissioning, at its own cost, two annual independent audits to check its compliance with workplace laws and provide the results [to us]', Ms Booth said.

The undertaking requires the company to engage an independent auditor to review payments already made to ensure that they were calculated correctly.

Guidance on AI use

By Nikki Shen, Partner, Hall Chadwick (WA)

The Governance Institute's latest *Good Governance Guide - Generative Artificial Intelligence* explains what you need to know about generative AI in an easy-to-read summary of the risks and benefits of the growing technologies.

The guide offers recommendations for directors and boards about what good governance should look like if they use AI within their organisations.

Generative AI can conduct simple tasks and produce 'new' content that differs from the information from which it is derived. The technology can respond in a 'human-like' conversation or with a finished 'product.' The most familiar example is ChatGPT.

For an organisation, AI can play a role in decision-making, giving rise to ethical dilemmas and reputational issues, and therefore requires solid oversight.

The institute's guide acts as a useful tool for professionals in determining the roles and responsibilities of both boards and directors to ensure its lawful and ethical use.

Governance Institute's CEO Megan Motto welcomes the guide as a 'helpful prompt' for directors and boards to consider the impact of generative AI on their organisations.

'These technologies are rapidly evolving.

Organisations must look at the skills and roles needed at a board level and throughout the organisation to support the ethical use of generative AI,' she said.

The guide outlines the responsibilities of directors in considering both an approval mechanism for AI used within an organisation as well as the processes employed in the development of applications that contain AI.

Failure to carefully consider the need for an AI strategy to develop and use AI may also result in strategic risks for an organisation and missed opportunities for growth.

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