



FRA NEWS

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Welcome to this issue of 'HLB FRA News'. Financial Reporting and Auditing (FRA) News ('FRA News') provides partners, staff and clients with a 'heads up' of contemporary financial reporting, auditing and corporate governance developments on a monthly basis. FRA News contains items requiring immediate consideration (**Need to Know**), whereas other items are for general information (**Nice to Know**).

FRA News is prepared by Colin Parker, Principal, GAAP Consulting, and former member of the Australian Accounting Standards Board (2006-2009) with the input of staff of GAAP.com.au Pty Ltd.

In this FRA News, your attention is drawn to the following developments:

Need to know:

- 355 ASIC Enforcement Outcomes in 6 Months
- Business Ethics Guidance
- Executive Remuneration Disclosure ASIC Review
- ACNC and 'Better Targeting' NFP Tax Concessions Delayed
- Auditing Financial Instruments New Guidance

Nice to know:

- New Business Names Register
- Charities Maritime and Aviation Support Program Discussion Paper
- Carbon Financial Products ASIC's Proposals
- APRA Releases 5 draft Basel Prudential Standards
- Co-operatives Draft National Law Approved
- Investment Manager Regime Legislation ED
- Registrable Superannuation Entities Audit Reports
- Updated IASB/AASB Work Plan
- AASB 9 Transitional Disclosures
- ACNC Chief Accountant and Other Senior Appointments
- Continuous Disclosure Breaches and Fines

355 ASIC Enforcement Outcomes in 6 Months

Need to know



ASIC released its first report detailing ASIC enforcement actions for the period 1 July to 31 December 2011. ASIC's strategic priorities are to ensure investors and financial consumers confident and informed, markets are fair and efficient and registration and licensing systems are efficient.

Holding the 'gatekeepers' of the financial system to account is an important part of how ASIC achieves its priorities. Investors and financial consumers rely on them to promote sound investment practices, prevent or detect market failures and promote market integrity.

The report outlines categories of gatekeepers against whom ASIC has taken action including financial advisers, responsible entities, credit licensees, market participants, directors, company officers, insolvency practitioners and auditors. Broadly, there are four principles of conduct gatekeepers must observe; they must display:

- Honesty by respecting other people's property and not using a position of trust for self-advantage;
- Diligence by applying due care and skill to advice or decision making;
- Competence by meeting any applicable conduct, licensing, registration and training obligations; and
- Independence by managing conflicts of interest appropriately."

When gatekeepers do not demonstrate these behaviours, ASIC will act. The release of ASIC's first enforcement report shows the breadth of our enforcement activities and demonstrates the type of poor conduct ASIC is focused on.

The enforcement outcomes set out in the report relate to a wide range of matters from offences attracting

significant penalties to record-keeping type offences grouped under the heading compliance and deterrence. They include 355 enforcement outcomes, including 252 criminal actions, in the six-month period. Appendix One of Report 281 ASIC enforcement outcomes: July to December 2011 sets out statistics about ASIC's enforcement activities.

The enforcement outcomes represents formal actions taken to secure compliance about which ASIC has made a public announcement (with the exception of a number of matters relating to ASIC's registration and licensing function). This report does not address enforcement outcomes from ASIC's market supervisory functions.

Key outcomes for that area are set out in Report 277 'ASIC supervision of markets and participants: July to December 2011'.

The release of REP 281 follows the release of Information Sheet 151 'ASIC's approach to enforcement', Information Sheet 152 'Public comment' and Regulatory Guide 100 'Enforceable undertakings'. It is anticipated that similar reports on ASIC's enforcement activity will be released every six months.

Business Ethics Guidance

The Accounting Professional and Ethical Standards Board (APESB) released revised guidelines to assist professional accountants in business address a range of ethical issues, including potential conflicts of interest arising from responsibilities to employers, preparation and reporting of information, financial interests and whistleblowing.

APES GN 40 'Ethical Conflicts in the workplace – Considerations for Members in Business' (GN 40) provides guidance on the application of fundamental principles contained in APES 110 'Code of Ethics for Professional Accountants' (the Code). GN 40 is the first guidance note issued by the APESB and will supersede

GN1 Members in Business Guidance Statement which was originally inherited from the accounting profession.

The revised guidance has been substantially revised to align with the Code.

It also now includes 21 case studies incorporating examples from commercial, public and not for profit sectors where professional accountants in business encounter ethical conflicts in their workplace that require the application of the fundamental ethical principles of the Code.

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Business Ethics Guidance (Continued)

Examples include inappropriate expense claims, preparation and reporting of information, inappropriate capitalisation of research and development costs, satisfying bank's lending criteria, earnings management, non-disclosure to auditors and corrupt business practices.

APES GN 40 also includes a new section that provides guidance for members in business regarding their professional obligations in relation to whistleblowing.

Members who are in such a situation are strongly advised to consult whistle-blower laws to establish the level of protection offered to them and the process they must follow to obtain that protection.

Executive Remuneration Disclosure ASIC Review



ASIC has called on companies to improve the disclosure of their remuneration arrangements for directors and executives.

The call for improvement follows a review of 50 remuneration reports, drawn from 300 of Australia's biggest companies, for the year ended 30 June 2011. ASIC undertook a similar review last year of 60 remuneration reports. ASIC's review examined 50 reports of ASX300 companies.

Under section 300A of the Corporations Act 2001 for the year ended 30 June 2011 listed companies were required to disclose in the 'Remuneration report' section of the directors' report the following information:

- Discussion of the board policy for remuneration;

- Discussion of the relationship between the board policy and company performance;
- Explanation of performance related remuneration and performance conditions;
- Additional information where securities are an element of remuneration;
- Additional information where options are an element of remuneration; and
- Additional information where a person is employed under a contract.

Listed entities should review their remuneration reports in light of ASIC's findings and identified best practice.

With effect from 1 August 2011, under section 250R(4) of the Corporations Act a member of the KMP whose remuneration details are included in the remuneration report and a closely related party of that person must not cast a vote on the resolution to adopt the remuneration report.

However, that person may vote if the person does so as a proxy appointed by writing that specifies how the proxy is to vote on the resolution and the vote is not cast on behalf of another member of the KMP or a closely related party of a member of the KMP.

ASIC surveyed how listed companies have managed the new voting exclusions that prohibit key management personnel (KMP) and their closely related parties voting on the resolution to adopt the remuneration report.

ASIC examined procedures adopted by 12 ASX300 companies that held their annual general meeting between 21 October 2011 and 23 November 2011.

Procedures used by some companies that others could adopt to provide the Chair of the meeting with greater confidence that only those votes that are permitted under the law have been counted, include:

- Requesting the KMP to advise their closely related parties of the voting prohibitions;
- Providing members of the KMP with a pro forma letter with instructions for nominee companies or trusts on not voting their shares;
- Seeking assurances from KMP that they will not cast votes; and
- Confirming that the share registry service provider, if used, has excluded the relevant votes.

ACNC and 'Better Targeting' NFP Tax Concessions Delayed

The Federal Government will delay the start date of the Australian Charities and Not-for-profits Commission to 1 October 2012 (previously 1 July 2012).

The three month extension provides more time for the sector and Government to continue to work closely together to finalise the legislation.

The ACNC will determine charitable status (including public benevolent institution status) for all Commonwealth purposes, provide education and support to the sector, administer a single national regulatory and reporting framework and maintain a public information portal.

The extension in the commencement of the ACNC does not affect the announced introduction of a general reporting framework and the establishment of a public information portal by 1 July 2013, nor the introduction of a statutory definition of 'charity' by 1 July 2013.

While the start of the ACNC has been delayed by three months, there is much work to be done in bring governance, preparers and stakeholders up to speed on the new regulatory regime.

The Federal Government also announced that it will defer the start date for the 2011-12 Budget measure to better target NFP tax concessions from 1 July 2011 to 1 July 2012.

The deferral of the measure will provide for additional time for consultation and it will reduce the uncertainty for those in the sector who have commenced commercial activities since the 2011-12 Budget that may be caught.

The extended start date of 1 July 2012 will only apply to new unrelated commercial activities that commenced after 7:30 pm (AEST) on 10 May 2011.



Existing unrelated commercial activities that commenced prior to that date will continue to be covered by transitional arrangements as announced in the 2011-12 Budget.

Auditing Financial Instruments New Guidance

The Auditing and Assurance Standards Board (AUASB) issued GS 020 'Special Considerations in Auditing Financial Instruments' which provides guidance about financial instruments and guidance to auditors on audit considerations relating to financial instruments. GS 020 replaces AGS 1030 'Auditing Derivative Financial Instruments' which was issued in July 2002.

Since then, the use of fair value accounting has become more prevalent and the Australian Auditing Standards have been updated. In addition, the global financial crisis highlighted the need for further guidance on auditing financial instruments generally, not just derivatives.

GS 020 assists the auditor in understanding and complying with the Australian Auditing Standards relevant to auditing financial instruments, including ASA 540 'Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures', ASA 315 'Identifying and Assessing the Risks of Material Misstatement through Understanding the Entity and Its Environment' and ASA 500 'Audit Evidence'. GS 020 is relevant to entities of all sizes, as all entities may be subject to risks of material misstatement when using financial instruments.

The guidance on valuation in GS 020 is highly relevant for financial instruments measured or disclosed at fair value, while the guidance on areas other than valuation applies equally to financial instruments either measured at fair value or amortised cost. GS 020 is also applicable to both financial assets and financial liabilities.

GS 020 has been written in the context of general purpose fair presentation financial reporting frameworks, but may also be useful, as appropriate in the circumstance, in other financial reporting frameworks such as special purpose financial reporting frameworks.

New Business Names Register ASIC's Guidance



ASIC released regulatory guidance to help businesses prepare for its new national register of business names. Commencing on 28 May (subject to the passage of legislation through state parliaments) the new business names register will allow businesses to register their name nationally through a simple and easy to use online service.

Businesses will only need to register their name once and will no longer be required to register separately in each state and territory they operate in.

Existing business names currently registered in a state or territory will be automatically transferred to the new register.

This new online service will simplify the registration process and reduce the burden on business by enabling them to register once nationally. Under this system, businesses will also have the option of registering their business name at a cost of \$30 for one year or \$70 for three years.

Currently, a business operating and registering their business name in every state and territory faces a cost of more than \$1,000 for three years registration. Consumers will be able to search online free of charge for contact and ownership details of any business name currently registered in Australia, resulting in greater transparency and accessibility.

Once the new service is launched, businesses will be able to check the availability of a business name and register, maintain and renew that business name with ASIC.

The general public will also be able to search the national register for a business name to identify the entity that has registered it and how to contact them. RG 235 'Registering your business name' aims to assist new businesses to prepare for the change, providing details on when and how to register a business name and maintaining a business name once it's registered.

RG 235 also gives guidance for businesses with existing business names, providing information about how the automatic transfer to the new register will occur, accessing the new register, checking details are up to date, and importantly how ASIC will contact businesses to renew their registration before their business name expires.

Charities Maritime and Aviation Support Program Discussion Paper

Under the Government's plan to secure a clean energy future, a carbon pricing mechanism will apply from 1 July 2012; this will cover pollution from stationary energy, waste, rail, domestic aviation and shipping, industrial processes and fugitive emissions. An effective carbon price will apply to fuels used in domestic aviation, marine and rail transport, as well as off-road transport and the non-transport use of liquid and gaseous fuels.

The carbon price will be applied through the fuel excise and fuel tax credits scheme.

The Government recognises that some charities, such as air and sea rescue services, may face higher costs as a result of the effective carbon price on fuels. To ensure such entities are not unduly impacted, the Government has established the Charities Maritime and Aviation Support Program. The Department of Climate Change and Energy Efficiency has prepared a discussion paper on the proposed design of the Government's Charities Maritime and Aviation Safety Program.

Charities providing maritime and aviation services will receive rebates to cover any cost increase on fuels purchased for eligible activities. As charities are unable to pass on fuel costs associated with an effective carbon price, it is important that charities can receive this assistance from 1 July 2012. Given charities often face administrative constraints and cash flow pressures, the proposed design that minimises reporting obligations and maintains important cash flows of charities.

The Government is inviting charities to lodge a submission on the administrative arrangements of the Charities Maritime and Aviation Support Program prior to them being finalised.

Carbon Financial Products ASIC's Proposals

ASIC released regulatory guidance to help business comply with its legal requirements leading up to the introduction of Australia's carbon pricing mechanism later this year. From 1 July 2012, emissions units recognised under the carbon pricing mechanism will be financial products under the Corporations Act 2001.

ASIC will be responsible for regulating entities and individuals that provide financial services in relation to emissions units. ASIC's Regulatory Guide 236 'Do I need a licence to participate in carbon markets?' is designed to help entities and individuals understand whether they require an AFS licence to provide financial

product advice and other financial services in relation to carbon markets and emissions units, and, if so, details the next steps and where people can find more information.

RG 236 provides: an introduction to ASIC's role in relation to carbon markets and emissions units; details regarding which emissions units are financial products and when you are likely to require an AFS licence, and an outline of the steps required to apply for an AFS licence or vary an existing licence.

ASIC will accept applications for new AFS licences or licence variations relating to emissions units when regulations

amending the Corporations Act are finalised. This is likely to occur by May.

ASIC is also consulting on proposals for applying our current AFS licensing policies to licensees providing financial services in relation to emissions units.

Consultation Paper 175 'Carbon markets: Training and financial requirements' invites feedback on the proposals for applying ASIC's current policies on training for financial product advisers and financial requirements to these licensees.

APRA Releases 5 draft Basel Prudential Standards

The Australian Prudential Regulation Authority (APRA) released for consultation a response paper and a set of five draft prudential standards that give effect to the Basel III capital reforms in Australia.

This package follows the release of a discussion paper in September 2011 on APRA's approach to these global capital reforms, which will raise the level and quality of capital in the global banking system.

APRA is not intending to change its broad approach to the implementation of the Basel III reforms. However, in response to issues raised, APRA is proposing to provide some limited flexibility on certain aspects of the reforms and it has provided clarifications on a number of technical elements.

The five draft prudential standards are:

- Prudential Standard APS 001 'Definitions', which defines terms that apply across ADI prudential standards;

- Prudential Standard APS 110 'Capital Adequacy', which sets out the overall Basel III capital framework, including minimum regulatory capital requirements and two new capital buffers;
- Prudential Standard APS 111 'Capital Adequacy: Measurement of Capital', which provides details on the eligibility criteria for regulatory capital and on regulatory adjustments;
- Prudential Standard APS 160 Basel III 'Transitional Arrangements', which outlines transitional arrangements for non-complying capital instruments; and
- Prudential Standard APS 222 'Associations with Related Entities', which now includes Extended Licensed Entity requirements previously included in APS 110.

APRA has also released a letter to ADIs outlining further interim arrangements for capital instruments that are issued before the new prudential standards come into effect on 1 January 2013.

These arrangements are additional to the arrangements set out in APRA's letters to ADIs of 17 September 2010 and 27 May 2011, which remain in force.



Co-operatives Draft National Law Approved



On 19 January 2012 the Consumer Affairs Forum (formerly the Ministerial Council on Consumer Affairs) comprising Ministers from each State and Territory unanimously approved the draft Co-operatives National Law. This approval is the first step in the process to pass and commence the legislation in all States and Territories.

In 2007, state and territory governments agreed to implement nationally uniform legislation for co-operatives, to address inconsistent state and territory legislation and competitive disadvantages that exist in comparison to entities operating under the Corporations Act 2001.

The objectives of the CNL are to ensure that there are no competitive advantages or disadvantages for co-operatives when compared to corporations by providing: freedom to operate on a national basis; better access to external capital funding; simplified reporting for small co-operatives; and an accessible modern legislative environment.

The introduction and operation of the CNL will be managed through the Australian Uniform Co-operatives Legislative Agreement. Under the Agreement, New South Wales (NSW) will enact the Law as the host jurisdiction and all other jurisdictions will then have 12 months to apply the legislation or enact

alternative consistent legislation. The Commonwealth Government is not a party to the Agreement.

The Government released a second exposure draft of legislation implementing the first stage of the Investment Manager Regime (IMR). The first exposure draft was released on 16 August 2011.

The first stage of the IMR has two objectives: firstly, to alleviate the impact of US accounting standard 'FIN 48'; and secondly to address the situation where a foreign managed fund is taken to have a permanent establishment in Australia because of its use of an Australian advisor, potentially resulting in some or all of the income of the fund being subject to Australian tax. The Government announced the final element of the IMR on 16 December 2011, legislation for which has not yet been drafted. Consultation on the development of this legislation will be undertaken at a later stage.

Investment Manager Regime Legislation ED

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Registrable Superannuation Entities Audit Reports

APRA has advised that the updated Approved Form of Audit Report required under Section 35C of the Superannuation Industry Supervision (SIS) Act 1993 (for financial periods commencing on or after 1 July 2011) is now available. The auditor's report has been revised to accommodate the following changes:

- Providing additional guidance in Part 2B (Compliance section) of the report;
- Incorporating the additional guidance, which was provided subsequent to the release of last year's report, in the relevant notes section of the report; and
- Updating the lodgement process to APRA.

Updated IASB/AASB Work Plan

The expected timing on a number of IASB, and hence AASB, projects has slipped once again:

- Leases: Re-exposure of the lease accounting proposals expected in the third/fourth quarters of 2012 (previously second quarter);
- General Hedge Accounting: A review draft of general hedge accounting requirements expected in the second quarter of 2012 (previously the first quarter); the targeted completion date of the standard remains unchanged (the second half of 2012) but that will be difficult to achieve;
- Macro Hedge Accounting: Exposure draft /discussion paper expected in the third/fourth quarter of 2012 (previously third quarter);
- Agenda Consultation: A feedback statement expected in the second quarter of 2012 (previously the first quarter), development of the future strategy is to occur in the second half of calendar 2012;
- Annual Improvements: The issue of the exposure draft arising from the 2010-2012 cycle is second quarter of 2012 (previously the first quarter); and

- Post-implementation Reviews: Review of IFRS 8 'Operating Segments' to result in a 'Request for Views' in the second quarter of 2012; and the review of IFRS 3 'Business Combinations' is to commence in the second quarter of 2012.

Also watch out for the financial instruments impairment exposure draft and a targeted ED on 'classification and measurement' in 3rd or 4th quarter. A review draft on insurance contracts is expected in third/fourth quarters.

AASB 9 Transitional Disclosures

The AASB issued Invitation to Comment ITC 26 'Disclosures on Transition to AASB 9 (proposed amendments to AASB 9 (December 2009), AASB 9 December 2010 and AASB 7) which contains the AASB's view that Australian Accounting Standards should incorporate the transitional disclosure requirements specified in IFRS 'Mandatory Effective Date and Transition Disclosures Amendment to IFRS 9 and IFRS 7'. The amendments to IFRS 9 and IFRS 7, which were issued in December 2011, introduced transitional disclosures that were not previously exposed, and therefore are the focus of this ITC.

The effect of the amendments would be to require Australian entities adopting Tier 1 or Tier 2 requirements to disclose on transition to AASB 9 the impact of reclassification of financial instruments, rather than restating comparatives, subject to specific rules according to transition date. The AASB invites comments from constituents who do not agree that the transition disclosures should be incorporated into Australian Accounting Standards for both Tier 1 and Tier 2 entities.

ACNC Chief Accountant and Other Senior Appointments

Jon Reid has been appointed as the Chief Accountant of ACNC. Jon joins the ACNC from the ASIC. Over a 5 year period, he has held various roles at ASIC, primarily in teams responsible for education, compliance, investigations and enforcement. His most recent role at ASIC has been as a Senior Financial Investigator, responsible for offering forensic accounting support on investigations being undertaken by various deterrence teams. Jon comes from a background in the private sector in accounting, taxation compliance and insolvency roles. He has been a member of the Institute of Chartered Accountants Australia for eight years. Jon has a keen interest in the charities and not-for-profit sector and the significance of the role it plays in Australian society.

Other senior appointments included: Andrew Sealey, Director of Compliance (Monitoring and Assurance), Sue Woodward, Director of Policy and Education, Sally Stonier, Director of Registration, Rachel Smith, Director of Advice Services, and Jennifer Dobell, Director of Business Services.

Continuous Disclosure Breaches and Fines



Leighton Holdings Ltd paid a total of \$300,000 after ASIC served three infringement notices alleging the company had not complied with the continuous disclosure provisions of the Corporations Act 2001 and relevant provisions of the ASX Listing Rules.

ASIC also accepted an enforceable undertaking (EU) which commits the company to reviewing its disclosure practices.

The infringement notices were issued following an investigation by ASIC into the matters in an announcement Leighton made to the market on 11 April 2011, in which Leighton announced a write down of \$907 million to its profit forecast.

Under the EU, Leighton will engage an independent consultant to review and recommend changes to its continuous disclosure procedures, and Leighton has agreed to implement those recommendations.

The progress and effectiveness of any changes to Leighton's procedures will be subject to an annual review for three years.

BC Iron Limited (BCI) paid a \$66,000 penalty. The alleged continuous disclosure breach related to a scheme implementation agreement (SIA) BCI entered into in 2011 with Regent Pacific Group Limited (Regent), a company incorporated in the Cayman Islands and listed on the Hong Kong Stock Exchange (HKSE).

BioProspect Limited paid a \$33,000 penalty. The alleged continuous disclosure breach related to statements it made about the interests of Frontier Gasfields Pty Ltd (Frontier), in which BioProspect was acquiring 25% equity.

Further information about ASIC's administration of continuous disclosure notices is contained in ASIC Regulatory Guide 73 'Continuous disclosure obligations: infringement notices' (RG 73).

Internet

Copies of 'FRA NEWS' are available on the internet at www.tnr.com.au

Queries

For further information or assistance, please contact your TNR Audit & Assurance Partner or Manager.

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