



Mertons' Corporate Snapshot – February 2018

Mertons' Corporate Snapshot provides you with an overview of current corporate governance matters, including regulatory changes, trends, and other important issues.

To discuss how these may affect you, please contact us on 03 8689 9997

Stronger Whistleblower Protections Bill

The government introduced the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017* into the Senate in December 2017. The Bill, if enacted, will strengthen legal protections, including:

- Requiring public companies to have and make available a whistleblower policy.
- Strengthening the confidentiality of a whistleblower's identity and disclosures.
- Expanding the definition of eligible whistleblowers.
- Ensuring information provided cannot be used as evidence against the whistleblower.

Read the Bill and associated documents [here](#).

Notifiable Data Breaches – effective 22 February 2018

The Notifiable Data Breaches scheme applies to organisations that have existing personal information security obligations under the Australian [Privacy Act 1988](#). The scheme introduces an obligation to notify individuals whose personal information is involved in a data breach that is likely to result in serious harm. The notification must include recommendations about the steps individuals should take in response to the breach. The Australian Information Commissioner must also be notified of eligible data breaches.

Organisations need to have processes in place to cover these obligations. Read about NDB [here](#).

Roadmap to better corporate culture

The Institute for Internal Auditors-Australia, The Ethics Centre, Governance Institute of Australia, and Chartered Accountants Australia New Zealand, have collaborated to produce a practical guide on how to develop a better corporate culture.

ASIC and APRA have both signalled the importance of corporate culture and its influence on behaviour and the approach to risk. The guide argues that an ethical framework that clearly espouses the purpose, values and principles of the organisation, should sit at the heart of the governance framework.

More information and download the guide [here](#).

Six ways to improve your risk culture

In an article for Company Director Magazine, John Wylie, Chair of the Australian Sports Commission, proposes that "it is in the national interest that our corporate sector has a strong appetite to take risk and invest, especially outside our market", and proposes six ways this can be achieved. Read the [article](#).

Director sentiment at record high

The latest survey of director sentiment by the Australian Institute of Company Directors (AICD) shows that sentiment is at its highest point ever, rising 23.4 points since this time last year. Directors expect to see increases in investment and hiring, unemployment to fall and wages to rise. However, over 90% of directors reported that business needs to make improvements to corporate culture. [Download the survey](#).

Director Identification Number (DIN) on the cards

In September 2017, The Hon Kelly O'Dwyer, Minister for Revenue and Financial Services, announced a reform package to crack down on illegal phoenixing activity, which is said to cost the economy up to \$3.2B per year. The package will include the introduction of a DIN that will identify directors with a unique number. The measure carries wide support from the opposition, as well as the Australian Institute of Company Directors, the Chartered Accountants Australia, and the Governance Institute.

The move follows on from a recommendation in the Productivity Commission's [Business Set-up, Transfer and Closure](#) inquiry report in December 2015. Read the [Minister's statement](#).

The future of AGMs is virtual

Two recent reports look into the impact of technology on the way AGMs are held.

A white paper by Computershare – [The future of shareholder meetings is virtually here](#) – considers the current state of play for virtual and hybrid meetings, including the perceived benefits and disadvantages.

The paper makes a range of recommendations for developing best practice online meetings and concludes that the trend towards use of virtual meetings is likely to continue as familiarity and comfort with digital interactions grows amongst the shareholder population.

The [Institutional Shareholder Services' Policy Survey](#) is an international survey that looks into topical governance areas. It found that ~19% of investors would consider a virtual or hybrid shareholder meeting while 8% of investors did not support either. The survey also found that

- 43% of investors believed strongly in the principle of one-share, one-vote, while an equal number said unequal voting rights may be appropriate in limited circumstances; and
 - 69% of respondents considered the lack of female directors on a board 'problematic'; most agreed that the absence of female directors could indicate problems in the board recruitment process.
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Single Touch Payroll reporting requirements

Single Touch Payroll is compulsory for all employers with 20 or more employees, from 1 July 2018. Under STP, salary and wages, PAYG withholding and super information will be reported directly to the Australian Tax Office (ATO) at the same time employees are paid. The ATO is promoting STP as a way of reducing administration by aligning payroll with reporting.

STP presumes that employees will view their payroll and annual payment summary online via MyGov. Once a person has a tax MyGov account, all tax-related information is available online and is not sent by post. The new system has important liability implications for directors and processes and payroll systems need to be updated for compliance ahead of the change.

Read more at the [ATO website](#) and at [BDO Australia](#).

ASIC news

ASIC Industry Funding.

New laws change the way that ASIC is funded. Regulated entities will pay the costs of ASICs regulatory services with actual costs allocated across 48 industry subsectors. Fees for service are likely to take effect from 1 July 2018 and ASIC is due to publish indicative levies for FY17-18 in March 2018.

Read more and download the factsheet [here](#).

Bitcoin and ICO listings

ASIC recently published guidance on the legal obligations of issuers of initial coin offerings (ICOs) in Australia and warned consumers of the potential risks of investing in ICOs, including the potential for these products to be scams (see [ASIC Information Sheet 225](#)).

ASIC's reports on the 2017 annual general meeting season

ASIC has published its overview of the annual general meeting (AGM) season for S&P/ASX 200 (ASX 200) listed companies in 2017. Read it [here](#).

ASIC's enforcement powers to be strengthened

The government is looking to substantially raise corporate penalties for white collar crimes and to give ASIC the power to force companies to forfeit profits from any wrongdoings. The ASIC Enforcement Review Taskforce identified key problems with the variety and quantum of penalties currently available.

Read GIA's analysis of the proposal [here](#). Download the ASIC Enforcement Review paper [here](#).

ASIC focus on financial report quality and new requirements

ASIC has announced its focus areas for financial reports for year ending 31 December 2017 and called on companies to focus on providing information that is useful and meaningful, and to consider new accounting requirements, in particular, AASB 9 *Financial Instruments* and AASB 15 *Revenue from Contracts with Customers* (both apply from years commencing 1 January 2018). Key areas to address include the values of assets and accounting policy choices, information on risks and other matters that may have a material impact on the future financial position or performance of the entity.

A complete list of focus areas is available [here](#).

Room for improvement in IPO prospectuses

ASIC research has found that there is scope for improvement in the usability and credibility of IPO prospectuses. The research, focusing on retail investors, explored the impact that prospectuses, marketing practices and other sources of information have on decision-making. The findings include that financial media is influential in both alerting investors to potential IPO and in guiding decision-making.

Download the report [here](#).

ASIC releases guidance on sell-side research

[Regulatory Guide 264](#) *Sell-side research* (RG 264) looks at the key stages of a capital raising transaction and provides specific guidelines on how an AFS licensee should manage conflicts of interest during each of these stages, including the preparation and production of investor education reports. RG 264 also provides general guidance for AFS licensees on the identification and handling of inside information by research analysts, and about the structure and funding of sell-side research teams.

ASX News

Reminder – listing rule amendments became effective 1 December 2017

Amendments relating to reverse takeovers (Listing Rule 7.2 exceptions 5 and 6) plus ancillary amendments (Listing Rules 7.3.10 and 14.11.1), general changes to voting exclusions (Listing Rule 14.11) and to the definition of “associate” (Listing Rule 19.12) became effective 1 December 2017. For further information on this and other recent amendments see [Listed@ASX Update no 09/17](#).

2018 reporting calendar now available

Note upcoming deadlines for periodic reports:

- Half year accounts (Jun year-end) – 28 February 2018.
- Preliminary final reports (Dec year-end) – 28 February 2018.
- Full year audited accounts/auditor's report/directors' statement (Dec year-end) – 29 March 2018
- Quarterly reports for mining exploration or oil and gas exploration entities – 31 January 2018.
- Half year accounts for mining and oil and gas exploration entities (June year-end) – 16 March 2018.

Failure to lodge on time will result in suspension of the entity's securities. Download the calendar [here](#).

ASX proposes process change for price sensitive announcements

Before releasing market announcements, ASX assesses whether they may be price sensitive. A 'price sensitive' tag leads to an automatic trading pause. ASX is proposing to update the lodgement process for a listed entity to indicate that an announcement is 'price sensitive' at the time of submitting the announcement to the ASX. ASX is planning to implement this change by mid-2018.

Listed market capitalisation on ASX.com.au

ASX now publishes the number of shares and market capitalisation of listed entities on the [company information pages](#) of the ASX website.

Giving and volunteering: the non-profit perspective

[The Giving Australia 2016 report](#) looks into how non-profit organisations engage with the community, business and philanthropic foundations. Key insights include:

- Fewer people are giving more, however, giving has remained stable at 0.68% of GDP since 2005.
- A greater percentage of women gave than men, and giving increased with age, income and education.
- Philanthropists are most influenced by where can they make the greatest impact.
- 80.0% of the adult population gave a total of \$11.2B in the 12 months preceding the report.
- Almost 50% of the adult population gave through 'charity gambling', lotteries and charity auctions.
- 44% of the adult population volunteer an average of 2.5 hrs per week (a total of 932 million hours).

The main reasons for not donating include concerns that too much goes to administration, not knowing where the money goes, and lack of confidence that the money would reach those in need.

Australian charities still facing reporting burden

The Australian Accounting Standards Board (AASB) recently published a research report – [AASB Research Report No 5: Financial Reporting Requirements Applicable to Charities](#) – and argues that Australian charities still face unnecessary complexity, inconsistent and uncertain requirements, and financial reports that are not focused on the needs of their stakeholders. The research showed that:

- There appears to be little focus on what information is most likely to be useful to the users of charities' reports, or how charities can present information in a way that helps to explain their performance.
- Charities face multiple regulators and audit requirements vary according to the regulator.
- Geographic location, entity type or self-assessment of obligations result in reporting variations.

Sources of information: Australian Accounting Standards Board (AASB); Australian Government; Australian Institute of Company Directors (AICD); Australian Securities and Investments Commission (ASIC); Australian Securities Exchange (ASX); Australian Tax Office; Australian Tax Practitioners Board; BDO Australia; Chartered Accountants Australia; Computershare; EY; Fundraising Institute of Australia; Governance Institute of Australia; Institute of Internal Auditors Australia; ISS; Office of the Australian Information Commissioner; Productivity Commission; PwC.

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