SUSTAINABILITY

ACCC 'greenwashing' internet sweep unearths widespread concerning claims

The ACCC will be investigating a number of businesses for potential 'greenwashing', following an internet sweep which found more than half of the businesses reviewed made concerning claims about their environmental or sustainability practices.

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The State of Play: Sustainability Disclosure & Assurance 2019-2021 Trends & Analysis

The State of Play in Sustainability Assurance benchmarking study captures and analyses the extent to which companies are reporting and obtaining assurance over their sustainability disclosures, which assurance standards are being used, and which companies are providing the assurance service.

ASIC's Indigenous Financial Services Framework

ASIC's Indigenous Financial Services Framework outlines key learnings which ASIC has developed through extensive consultations with a range of stakeholders on First Nations peoples' access to and engagement with the financial system.

TAXATION

Revenue foregone from tax concessions

Treasury has released the 2022-23 Tax Expenditures and Insights Statements which provides annual information on Australian government tax benchmarks.

FBT: car parking benefits – primary place of employment

ATO has released an Addendum to TR 2021/2 which adds new commentary on the meaning of “primary place of employment”.

FBT and electric vehicles: ATO fact sheet

ATO has released a fact sheet for employers on FBT obligations when providing an employee with an electric vehicle and associated items for their private use.

FBT draft instruments: alternative records

ATO has issued four draft instruments specifying acceptable alternative record keeping obligations in respect of expense payment fringe benefits.

Director IDs: exemptions for corporate bodies

ATO has issued two legislative instruments which exempt certain corporate bodies and directors who have resigned from the obligation to obtain a director ID.

Government announces lead to MBR program review

Government has announced the lead to the independent review into the Modernising Business Registers (MBR) program.

GST industry issue withdrawn: supplies of digital products

The ATO has withdrawn GST Industry Issue Application of GST to supplies of digital products made to Australian recipients from non-resident supplies.

FINANCIAL SERVICES

Good practices on whistleblower disclosures: ASIC

ASIC has released a report on good practices for handling whistleblower disclosures as observed from its review.

SUPERANNUATION

Super account balances above $3m to be taxed 30% on earnings

The government has announced that it will increase the tax rate for super fund earnings from 15% to 30% for individuals with account balances above $3m.

Super tax changes: Treasury fact sheet

Treasury has released a fact sheet setting out further detail about its proposed super tax changes for individuals with account balances above $3m.

Objective of superannuation: consultation paper

Treasury has released a consultation paper seeking feedback about the wording of a proposed “objective of superannuation”.

Assistant Treasurer’s speech on superannuation

The Assistant Treasurer has given a speech at the SMSF Association conference outlining issues that are driving the government.

$16bn in lost superannuation

ATO has urged people to check if they have lost or unclaimed super via myGov and to keep contact information up to date.

APRA quarterly statistics for Dec 2022

APRA has released its quarterly super performance publication and the quarterly MySuper statistics report.

REGULATOR NEWS

APRA re-issues the 2022 MySuper Heatmap

APRA has reissued its 2022 MySuper Heatmap publication to reflect the correct international index data in the metrics.

APRA super data transformation forum notes published

APRA has released the notes of the Super Data Transformation Strategic Forum which was used to obtain input from industry stakeholders.

Class order on competency standards for approved SMSF auditors to sunset

'ASIC issued a media release proposing to allow class order [CO 12/1687] Competency Standards for Approved SMSF Auditors to sunset on 1 April 2023'.

IFAC & SSB Monthly Update - March 2023

There are many interesting and broad-ranging topics covered in the recent newsletter from the International Federation of Accountants (IFAC), including recent developments on sustainability reporting, resources for small to medium practices and much more.

ACCC ‘greenwashing’ internet sweep unearths widespread concerning claims

The ACCC will be investigating a number of businesses for potential ‘greenwashing’, following an internet sweep which found more than half of the businesses reviewed made concerning claims about their environmental or sustainability practices.

Of the 247 businesses reviewed during the sweep, 57 per cent were identified as having made concerning claims about their environmental credentials. The cosmetic, clothing and footwear and food and drink sectors were found to have the highest proportion of concerning claims among the industries targeted in the operation. Other sectors examined also had a significant proportion of concerning claims.

"Our sweep indicates a significant proportion of businesses are making vague or unclear environmental claims. This warrants further scrutiny," ACCC Deputy Chair Catriona Lowe said.

"Consumers are now, more than ever, making purchasing decisions on environmental grounds. Unfortunately, it appears that rather than making legitimate changes to their practices and procedures, some businesses are relying on false or misleading claims. This conduct harms not only consumers, but also those businesses taking genuine steps to implement more sustainable practices."

"Businesses using broad claims like ‘environmentally friendly’, ‘green’, or ‘sustainable’ are obliged to back up these claims through reliable scientific reports, transparent supply chain information, reputable third-party certification or other forms of evidence."

"Where we have concerns, we will be asking businesses to substantiate their claims," Ms Lowe said.

"Already, we have several active investigations underway across the packaging, consumer goods, food manufacturing and medical devices sectors for alleged misleading environmental claims and these may grow, as we continue to conduct more targeted assessments into businesses and claims identified through the sweep. We will take enforcement action where it is appropriate to do so as it is critical that consumer trust in green claims is not undermined."

The ACCC will also conduct a range of education activities with businesses, including updating economy-wide guidance material, in addition to targeted guidance for specific sectors.

"The sweep has helped inform our forthcoming guidance about what steps businesses need to take to improve the integrity of their environmental claims," Ms Lowe said.

"We want to see businesses taking steps to ensure that environmental claims are accurate as well as meaningful for consumers. Our sweep has shown that claims are most useful where they are relevant, clear, reliable and transparent."

Read the full release here.

Trust in Artificial Intelligence – A global study

This research is the first to take a deep dive examination into the public's trust and attitudes towards the use of AI, and expectations of the management and governance of AI across the globe.

Some of the key findings are as follows:

- Most people are wary about trusting AI systems and have low or moderate acceptance of AI: however, trust and acceptance depend on the AI application.
- People recognise the many benefits of AI, but only half believe the benefits outweigh the risks.
- People perceive the risks of AI in a similar way across countries, with cybersecurity rated as the top risk globally.
- There is strong global endorsement for the principles of trustworthy AI: trust is contingent on upholding and assuring these principles are in place.
- People are most confident in universities and defence organisations to develop, use and govern AI and least confident in government and commercial organisations.
- People expect AI to be regulated with some form of external, independent oversight, but view current regulations and safeguards as inadequate.
- Most people are comfortable with the use of AI to augment work and inform managerial decision-making, but want humans to retain control.
- People want to learn more about AI but currently have low understanding.

Read the full report from KPMG and the University of Queensland here.

The State of Play: Sustainability Disclosure & Assurance 2019-2021 Trends & Analysis

The State of Play in Sustainability Assurance benchmarking study captures and analyses the extent to which companies are reporting and obtaining assurance over their sustainability disclosures, which assurance standards are being used, and which companies are providing the assurance service.

Australia profile:

- Second highest rate of net zero emissions targets (76%) globally.
- Highest audit firm assurance market share (94%) in the Asia-Pacific.
- Use of the TCFD Framework has increased from 54% in 2019 to 86% in 2021.
- Use of the GRI Standards have increased from 70% in 2019 to 82% in 2021.

Rate of ESG Assurance comparison

- Australia: 69.4% (94.3% of this assurance is provided by audit firms).
- USA: 81.8% (only 15.3% of this assurance is provided by audit firms).
- UK: 81.8% (only 36.4% of this assurance is provided by audit firms).
- France: 98% (98% of this assurance is provided by audit firms).
- Japan: 68.7% (46.6% of this assurance is provided by audit firms).

The report also finds that "most assurance engagements remain narrowly focused on greenhouse gas metrics. Little more than half (53%) of engagements encompassed a range of ESG disclosures."

The full report from IFAC is available here.

ASIC's Indigenous Financial Services Framework

ASIC's Indigenous Financial Services Framework outlines key learnings which ASIC has developed through extensive consultations with a range of stakeholders on First Nations peoples' access to and engagement with the financial system. These learnings have been tested and confirmed by First Nations consumers and communities as important concepts to be acknowledged and understood.

This Framework outlines how ASIC will use the key learnings to inform our work and priorities relating to First Nations consumers. ASIC is also sharing the key learnings through this Framework for other stakeholders to consider and use in their respective roles, to support positive financial outcomes for First Nations peoples.

View and learn more about ASIC's Indigenous Financial Services Framework here.

TAXATION

Revenue foregone from tax concessions

Treasury has released the 2022-23 Tax Expenditures and Insights Statement (previously termed the "Tax Benchmarks and Variations Statements"). The Statement provides annual information on Australian Government tax benchmarks and variations, as required by the Charter of Budget Honesty Act 1998.

The majority of estimates included in the Statement are provided on a "revenue forgone" basis. Treasury advises that this is consistent with the approach taken by most OECD countries in their equivalent tax benchmarks and variations publications.

The 10 largest measured positive benchmark variations in 2022-23 are listed below.

- Main residence exemption – discount component (revenue forgone: $26 billion).
- Rental deductions (revenue forgone: $24.4 billion).
- CGT discount for individuals and trusts (revenue foregone: $23.7 billion).
- Concessional taxation of employer superannuation contributions (revenue foregone: $23.3 billion).
- Main residence exemption (revenue forgone: $22 billion).
- Concessional taxation of superannuation entity earnings (revenue forgone: $21.5 billion).
- Work-related expenses (revenue foregone: $9.9 billion).
- Food (GST revenue forgone: $8.4 billion).
- Exemption for NDIS amounts (revenue foregone: $8.08 billion).
- Accelerated depreciation for business entities (revenue forgone: $7.8 billion).

In the accompanying press release, the Treasurer focusses very much on the superannuation aspect:

- "superannuation tax breaks" are worth about $50 billion a year;
- the 10 biggest tax expenditures are worth more than $150 billion annually – around a third of the top 10 is made up of "superannuation tax discounts".

Mr Chalmers states that the majority of these super tax breaks go to high income earners. "For instance, over 55% of the benefit of superannuation tax breaks on earnings flow to the top 20% of income earners, with 39% going to the top 10% of income earners."

FBT: car parking benefits – primary place of employment

The ATO has released an Addendum to TR 2021/2, its FBT ruling on car parking benefits. The Addendum adds new commentary and a new example on the meaning of "primary place of employment".

These amendments are in response to the decision in FCT v Virgin Australia Regional Airlines Pty Ltd [2021] FCAFC 209, where the Full Federal Court held that an airline provided car parking fringe benefits to its flight and cabin crew when it contracted with car park operators for the provision of car parking spaces at various airports.

FBT and electric vehicles: ATO fact sheet

The ATO has released a fact sheet for employers on FBT obligations when providing an employee with an electric vehicle and associated items for their private use. The fact sheet highlights the following key points:

- An FBT exemption may apply to a car benefit arising from making available an electric vehicle (EV) to an employee, or their associates, for their private use.
- From 1 April 2025, private use of a plug-in hybrid EV is no longer eligible for the exemption unless: (i) use of the plug-in hybrid electric vehicle was exempt before 1 April 2025; and (ii) the employer has a financially-binding commitment to continue providing private use of that vehicle on and after 1 April 2025.
- If an employer or lessor provides an employee with the use of a car by means of a lease arrangement, the benefit provided is only a car benefit if the car lease arrangement is a bona fide car leasing arrangement.

- Associated benefits arising from the provision of certain car expenses provided with the EV are also exempt from FBT. These are not included when working out if an employee has a reportable fringe benefits amount.
- Providing an employee with a home charging station is a fringe benefit - the benefit is not an exempt associated benefit.
- If the use of the car and the associated car expenses are provided under a salary sacrifice arrangement, the exemption can still apply.
- Even if an exemption applies for the EV car benefit, the employer still needs to work out the taxable value of the car benefit provided, as the benefit's value is used in working out if the employee has a reportable fringe benefits amount. This does not include the value of any associated car expense benefits.

FBT draft instruments: alternative records

The ATO has issued four draft instruments specifying acceptable alternative record keeping obligations (other than an employee declaration) in respect of expense payment fringe benefits where:

- the employer seeks to reduce the taxable value of the specified benefit;
- the benefit consists in whole or part of a reimbursement of a "Div 28 car expense" incurred by the employee (or family member) in relation to a car they own or lease; and
- the reimbursement is calculated on a cents per kilometre basis.

The four draft instruments are as follows:

- LI 2023/D3: Fringe Benefits Tax Assessment (Adequate Alternative Records - Overseas Employment Holiday Transport) Determination 2023 - in respect of overseas employment holiday transport (s 61A of the Fringe Benefits Tax Assessment Act 1986 (FBTAA));
- LI 2023/D4: Fringe Benefits Tax Assessment (Adequate Alternative Records - Car Travel to Employment Interview or Selection Test) Determination 2023 - in respect of travel to an employment interview or selection test (s 61E of the FBTAA);
- LI 2023/D5: Fringe Benefits Tax Assessment (Adequate Alternative Records - Remote Area Holiday Transport) Determination 2023 - in respect of remote area holiday transport (s 60A or s 61 of the FBTAA); and
- LI 2023/D6: Fringe Benefits Tax Assessment (Adequate Alternative Records - Car Travel to Certain Work-Related Activities) Determination 2023 - in respect of car travel for a work-related medical examination, work-related medical

screening, work-related preventative health care, work-related counselling or migrant language training (s 61F of the FBTAA).

All four instruments commences on 1 April 2023.

Comments for each of the four draft instruments are due by 17 March 2023.

Director IDs: exemptions for corporate bodies

The ATO has issued two legislative instruments which exempt certain corporate bodies and directors who have resigned from the obligation to obtain a director identification number ("Director ID"). The Corporations (Aboriginal and Torres Strait Islander) (Eligible Officer Exclusion - resigned directors) Determination 2022 applies to entities subject to the Corporations (Aboriginal and Torres Strait Islander) Act 2006 ("CATSI Act"). The Corporations (Eligible Officer Exclusion - non-individuals and resigned directors) Determination 2022 applies to entities subject to the Corporations Act.

Broadly there are two categories of entities excluded from being an eligible officer and requiring a Director ID:

- corporate directors – non-individual entities that hold a role as a director under the Corporations Act;
- resigned directors – individuals who have ceased to hold any role as a "director or alternate director acting in that capacity" prior to 1 December 2022 (for directors under the Corporations Act) or 1 December 2023 (for directors under the CATSI Act).

The instrument for resigned directors and non-individual directors under the Corporations Act will take effect from 1 December 2022, while the instrument for resigned directors under the CATSI Act will take effect 12 months later, ie from 1 December 2023. They were issued in draft form in November 2022 and are largely unchanged.

Government announces lead to MBR program review

The Government has announced that Mr Damon Rees will lead the independent review into the Modernising Business Registers (MBR) program. Currently the CEO of Better As Usual, Mr Rees has also previously held senior digital and information technology related roles at Westpac, Woolworths and Macquarie Group.

The review of the MBR program is to ensure that changes are delivered within a reasonable timeframe and budget.

GST industry issue withdrawn: supplies of digital products

The ATO has withdrawn GST Industry Issue Application of GST to supplies of digital products made to Australian recipients from non-resident suppliers. This product is no longer current due to legislative changes in 2016 which ensure GST is applied consistently to all supplies of digital products and other imported services to Australian consumers.

The withdrawal notice directs the reader to the following GST rulings, which set out the ATO's current views on the GST treatment of supplies of digital products to Australian consumers from non-resident suppliers:

- GSTR 2017/1 on cross-border supplies to Australian consumers; and
- GSTR 2019/1 on supplies of intangibles connected with Australia.

FINANCIAL SERVICES

Good practices on whistleblower disclosures: ASIC

ASIC has released a report on good practices for handling whistleblower disclosures. The report (REP 758) sets out the good practices ASIC observed from its review of seven entities' whistleblower programs.

ASIC encourages entities to consider how to scale and tailor the good practices to suit their operations. ASIC also said it will continue to review entities' whistleblower policies and arrangements for handling disclosures, including when it receives reports from whistleblowers alleging breaches of the whistleblower protections.

SUPERANNUATION

Super account balances above $3m to be taxed 30% on earnings

The Government has announced that it will increase the tax rate for superannuation fund earnings from 15% to 30% for individuals with account balances above $3 million.

Currently, fund earnings from superannuation in the accumulation phase are taxed at up to 15%. This 15% tax rate will continue for account balances below $3 million but will be increased to 30% for balances above that amount (around 80,000 people). The Treasurer said the increased tax rate will not impose a limit on the size of superannuation account balances in the accumulation phase but will instead apply to future earnings from 1 July 2025. It is expected to generate an extra $2bn in revenue per year.

The Government said it will introduce legislation to implement the measure "as soon as practicable" after consultation with industry.

Date of effect: 1 July 2025.

Super tax changes: Treasury fact sheet

Treasury has released a fact sheet setting out further detail about its proposed superannuation tax changes for individuals with account balances above $3m. The fact sheet, Better Targeted Superannuation Concessions, sets out the proposed application and earnings calculation method, together with examples.

Under the proposed changes, individuals with total superannuation balances (TSBs) over $3m at the end of a financial year will be subject to an additional tax of 15% on earnings. Broadly, the additional tax will only apply to the proportion of earnings corresponding to balances above $3m. Earnings will be calculated with reference to the difference in TSB at the start and end of the financial year, adjusting for withdrawals and contributions. Negative earnings will be carried forward. Similar to the existing Division 293 tax regime, individuals will have the choice of either paying the additional 15% tax out-of-pocket or from their super funds.

SMSF Association CEO Peter Burgess said the good news is that super funds will not be required to calculate the earnings attributable to the member's balance above $3m. Rather, the ATO will use a prescribed formula to calculate the proportion of total earnings which will be subject to the additional 15% tax. But on the debit side, the ATO will be using an individual's total super balance to calculate their earnings, which means it will include all notional (unrealised) gains and losses. The SMSF Association's preferred approach would be for the ATO to calculate "notional earnings" using a similar approach to the existing excess contributions tax regime.

Objective of superannuation: consultation paper

Treasury has issued a consultation paper seeking feedback about the wording of a proposed "objective of superannuation". The rationale behind the proposal is that – according to the Treasurer – despite its central role in the retirement income system, "there is no agreed objective of superannuation, legislated or elsewhere, to serve as a guide for policy makers, government, regulators, industry, and the wider community".

The proposed wording is currently as follows:

"The objective of superannuation is to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way."

Submissions close on 31 March 2023.

Assistant Treasurer’s speech on superannuation

The Assistant Treasurer, Mr Stephen Jones, has given a speech at the SMSF Association Conference, which serves as a broad-brush outline of the issues that are driving the Government to codify the objective of superannuation.

Entitled The objective of superannuation, the speech states that "superannuation is for retirement incomes". The speech cites as "attacks" on super as including proposals to use super for housing, education or healthcare.

In terms of taxation, the Assistant Treasurer states that it is "timely" to have a conversation about what "a dignified retirement means in the context of a sustainable retirement system". He goes on to state that "many people will be able to have a very dignified retirement well into the future with a balance that is significantly lower than $100 million". In terms of early access, the speech reiterates that restricting access until retirement is "fundamental".

$16bn in lost superannuation

Lost and unclaimed superannuation has reached $16bn after rising $2.1bn since last financial year. ATO Deputy Commissioner Emma Rosenzweig said people can check if they have any lost or unclaimed super via myGov. The ATO also urged people to keep up-to-date their contact information and bank account details to assist the ATO to consolidate super accounts.

APRA quarterly statistics for Dec 2022

APRA has released its Quarterly Superannuation Performance publication and the Quarterly MySuper Statistics report for the December 2022 quarter. The industry performance statistics contains aggregate summaries of financial performance and position, asset allocation and key performance ratios; and MySuper statistics contains data relating to product profile, asset allocation targets and ranges, investment performance and net returns, as well as fees and costs.

REGULATOR NEWS

APRA re-issues the 2022 MySuper Heatmap

APRA has re-issued its 2022 MySuper Heatmap publication to reflect the correct international index data in the relevant investment and performance test metrics. APRA said that the re-issue has not resulted in any changes to the products identified as having poor performance or significantly poor performance in December 2022, nor to the performance test determinations issued in August 2022.

APRA's Superannuation heatmaps FAQ provides further information on the amendments.

APRA super data transformation forum notes published

APRA has released the notes of the Superannuation Data Transformation Strategic Forum (SDTSF) which was held on 14 February 2023. The purpose of the SDTSF is to obtain input from industry stakeholders to contribute to APRA's understanding and resolution of the challenges for implementing the new super data collections.

The next SDTSF will be held on 16 May 2023.

Class order on competency standards for approved SMSF auditors to sunset

‘ASIC issued a **media release** proposing to allow class order [CO 12/1687] Competency Standards for Approved SMSF Auditors to sunset on 1 April 2023. The class order, made under s 128Q(1) of the SIS Act, sets out competency standards for approved SMSF auditors. ASIC considers that the class order is no longer necessary and relevant, given the SIS Act already requires all SMSF auditors to be registered with ASIC.’

IFAC & SSB Monthly Update - March 2023

There are many interesting and broad-ranging topics covered in the recent newsletter from the International Federation of Accountants (IFAC), including recent developments on sustainability reporting, resources for small to medium practices and much more. Click here to see the full update.