CLYDE&CO

Regulatory trends 2019

Building resilience to a changing regulatory landscape

CONTENTS

Introduction

BUILD RESILIENCE – MANAGE RISK – INCIDENT RESPONSE

The fast pace of regulatory change in Australia continues in 2019. This report sets out a summary of the key regulatory trends that are confronting our clients across our key sectors of insurance, energy, trade, transport and infrastructure.

By international standards, Australia is one of the most regulated economies in the world. This year's publication is designed to provide you with an overview of the most pressing regulatory issues that businesses operating in Australia need to be aware of, and to provide practical advice as to what businesses should be doing to manage these issues. Given the release of the Final Report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry this edition includes a special feature on the regulation of financial services industries. Also profiled are a number of developments affecting the regulation of international trade and transport, including the emerging drone regulatory regime.

Clyde & Co is committed to ensuring that our clients are in the best position possible to respond to any regulatory issues that do arise. The consequences of failing to prepare include civil and criminal penalties, reputational damage and in the most extreme cases, loss of authority to operate a business. Our regulatory and investigations team focus on these issues and are able to help organisations build resilience through practical advice that deals with these complex regulatory challenges.

Corporate regulation

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CORPORATIONS LAW

WHAT ARE THE EMERGING ISSUES?

- Tougher penalty framework
- Revised ASX Governance Principles
- Climate change disclosure

NEW PENALTY FRAMEWORK FOR CORPORATIONS LAW

From 13 March 2019, companies that engage in corporate misconduct are now exposed to significantly increased financial penalties.

The Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019 (Cth) (**Penalties Act**) received Royal Assent on 12 March 2019.

The Penalties Act is designed to deal with the long-held concern that penalties for breaches of corporations law are insufficient to deter misconduct. This issue was squarely raised in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**the Financial Services Royal Commission**).

To deter future misconduct, the Penalties Act has increased civil and criminal penalties for breaches of the Australian Securities and Investments Commission (**ASIC**) administered legislation including the Corporations Act 2001 (Cth) (**Corporations Act**), Australian Securities and Investments Commission Act 2001 (Cth), National Consumer Protection Act 2009 (Cth) and the Insurance Contracts Act 1984 (Cth) (**Insurance Contracts Act**).

The Penalties Act increases financial penalties and terms of imprisonment. Those involved in corporate misconduct face a greater risk of increased financial exposure for such wrongdoing.

Civil penalties increased up to a cap of AUD 525 million for corporations. Criminal penalties are further set out in the Corporate Crime Regulatory Update (see page 20).

Breaches of general Australian Financial Service Licence (**AFSL**) obligations by a company under section 912A of the Corporations Act will now attract a financial penalty.

Under the Penalties Act the penalty will be the greater of:

- AUD 10.5 million;
- three times the value of the benefit derived from the contravention; and
- 10% of the company's annual turnover, capped at AUD 525 million.

The Courts have also been provided with greater discretion to provide compensation to victims and a relinquishment regime has been introduced to ensure any financial benefit gained as a result of the misconduct is disgorged.

REVISED ASX CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS

The ASX Corporate Governance Council (**the Council**) released the fourth edition of its Corporate Governance Principles and Recommendations on 27 February 2019.

In the revised principles, there is a significant focus on organisational culture and a number of new board responsibilities are designed to focus on corporate culture and governance. Principle 3 has been substantially revised to require that a listed entity "…continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly".

In terms of new policies, the recommendations suggest that every listed entity should have a whistleblower policy and an anti-bribery and corruption policy. There is also a focus on risk management in the revised principles. This includes ensuring that the company has risk strategies to deal with contemporary and emerging risks such as conduct risk, digital disruption, cyber-security, privacy, data protection, climate change and sustainability.

Under Rule 4.10.3 of the ASX Listing Rules, ASX listed entities are required to include in their disclosures a benchmark of their corporate governance practices against the Council's recommendations. If an entity's practices do not conform, then, in accordance with the "if not, why not" approach, they must disclose that fact and specify the reasons for the departure.

DISCLOSURE OF CLIMATE CHANGE RISKS

There have been a number of developments in recent years which have put pressure on companies to consider climate change risks and make appropriate disclosures in their annual reports.

Australian shareholders have been taking a more active approach to pushing for disclosure of climate change risk by Australian listed companies by proposing shareholder resolutions on the topic at Annual General Meetings and have gone as far as launching legal proceedings against companies for failure to adequately disclose climate change risk in Annual Reports. In 2018, ASIC publicly stated that its key priorities in relation to climate change risks are corporate governance and disclosure, with ASIC Commissioner John Price highlighting that corporate governance practices for managing risks and opportunities should apply to climate change risks in a similar manner as these practices already apply to compliance risks, cyber security or digital disruption.

The voluntary disclosure framework developed by the Taskforce on Climate-Related Financial Disclosures (**TFCD**) in June 2017 may help companies in considering how to disclose climate change related risks in a way which will take into account the general information needs of investors outside of the strict legal requirements for disclosure.

Although at this stage, no changes will be introduced to the existing disclosure regime in Australia to incorporate the TFCD disclosure framework, ASIC has signalled that it will be closely monitoring developments on disclosure in this area, following a number of Australian listed companies announcing an intention to report, or commence reporting over time, under the TCFD framework.

In August 2019, ASIC updated its guidance on climate change related disclosure. The new guidance elaborates on how climate change risks should be incorporated into corporate documents. Importantly, the potential exposure of directors is specifically addressed and highlights that statements must be based on best available evidence at the time, have a reasonable basis and be updated if events overtake the relevant statement.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

It is clear from the recent regulatory developments in corporations law that the central theme for the year for both ASIC and the ASX is ensuring good corporate culture across Australian companies.

The introduction of tougher penalties will assist ASIC in its pursuit of corporate misconduct arising from poor corporate governance practices.

Businesses should undertake reviews of their existing corporate governance policies, procedures and frameworks to ensure that all of their corporate law obligations are met, including in emerging areas such as climate change risks disclosure.

Corporate culture will continue to be a focus by regulators and it will be increasingly important for businesses to have data and analytics to support and demonstrate the effective implementation of policies and processes. Compliance frameworks must be adapted to reflect this shift and executives must lead culture revision from the top.

COMPETITION LAW

WHAT ARE THE EMERGING ISSUES?

- Cartel action
- Misuse of market power
- Digital platforms

CARTEL ACTION

Collusive behaviour continues to be a major target for enforcement action in the area of competition law. It is anticipated that the Australian Competition and Consumer Commission (**ACCC**) will conclude and prosecute two to three cartel cases per year.

In recent years, the ACCC has pursued action against criminal cartel behaviour in the following sectors:

- the banking industry (ANZ, Deutsche Bank, Citigroup, and various senior executives);
- the shipping industry (K-Line); and
- the Construction, Forestry, Maritime, Mining and Energy Union and its ACT Divisional Branch Secretary.

The ACCC has also demonstrated its willingness to prosecute individuals and executives found guilty of a criminal cartel offence could face a prison sentence of up to 10-years.

In 2018, the ACCC prosecuted its first "gun jumping case' against Cryosite Limited and Cell Care Australia Pty Ltd and the judgment was handed down by the Federal Court on 13 February 2019.

The ACCC alleged that the two companies engaged in cartel behaviour by coordinating their business activities prior to completion of a merger approval and while they were still independent competitors.

The Federal Court held that Cryosite engaged in cartel conduct by agreeing to refer all customer enquiries to Cell Care as part of a merger agreement and noted:

> "Market sharing, including when it is undertaken in the context of a proposed or anticipated sale of business, is cartel conduct. And cartel conduct of its nature causes serious harm to consumers, other businesses and the economy."

The ACCC also continues to seek significant penalties for cartel conduct. In 2018, following an appeal of the initial penalty by the ACCC, the Full Federal Court of Australia imposed a $46 million penalty on Yazaki Corporation. In August 2019, K-Line was convicted and fined $34.5 million. This is the largest ever criminal fine imposed under the **Competition and Consumer Act 2010** (Cth) (**CCA**).

MISUSE OF MARKET POWER

There is an expectation that following the introduction of new competition laws at the end of 2017, the ACCC may look to test the new misuse of market power prohibition in 2019.

Under the previous market power provisions, it was necessary to demonstrate that a business was misusing its market power for the "purpose of substantially lessening competition". The new test in section 46 of the *Competition and Consumer Act 2010* (Cth) is broader and it is now sufficient to demonstrate that conduct taken by a business has the "purpose, effect or likely effect of substantially lessening competition".

Any company that has substantial market power in a particular market should carefully consider whether its practices might result in a substantially lessening of competition. Such a result may arise even where the intention of the conduct is to create greater competition.

In 2018, the ACCC released an update of its Guidelines on misuse of market power.

DIGITAL PLATFORMS

The ACCC has undertaken the world's first review of the role of digital platforms in the economy.

The ACCC's final Digital Platforms Report was released in July 2019 and considered the impact of digital search engines, social media platforms and digital content aggregation platforms on media and advertising, with a large focus on Google and Facebook.

The ACCC proposed that designated digital platforms should each separately be required to provide a code of conduct to the Australian Communications and Media Authority (**ACMA**) to govern their commercial relationships with news media businesses, which is aimed at addressing the imbalance in the bargaining relationship between these organisations. The ACMA would closely consult with the ACCC in performing its role under this recommendation, and it is proposed that breaches of the code would be dealt with by the ACMA, which would be vested with appropriate investigative and information gathering powers and the capacity to impose sufficiently large sanctions for breaches to act as an effective deterrent.

The ACCC also recommended that changes be made to the *Privacy Act 1988* (Cth) to allow consumers to make more informed decisions about the use and collection of their personal information, including the strengthening of consent requirements. It is also proposed that the Office of the Australian Information Commissioner engage with digital platforms to develop an enforceable code of practice. The ACCC noted that in March 2019, the Government announced the creation of a legislated code to apply to social media and online platforms which trade in information and the ACCC's recommendation could align with and be taken into account in the Government's consideration of the substance and reach of that code.

MERGER PROPOSALS

Although there is no legal requirement to notify the ACCC of a merger, many companies still seek to confirm that the ACCC will not oppose a merger through the informal merger review process. The decision by the ACCC in May 2019 to oppose the merger of TPG Telecom Limited and Vodafone Hutchinson Australia Pty Ltd on the basis that it would result in reduced competition and contestability, has put the ACCC's approach to competition under close scrutiny. The parties involved are seeking review of this decision in the Federal Court of Australia.

The decision appears to reflect an increasing focus by the ACCC on excessive consolidation in particular industries. There is a particular concern by the ACCC that acquisition of new entrants, who have the longer term potential to enhance competition in a sector may have far-reaching consequences.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

In light of the active approach being taken by the ACCC to enforcement action for cartel behaviour and the potential for the ACCC to test the new misuse of market power provisions, business leaders should consider enhancements to their existing corporate capability for addressing and responding to competition law issues or face the risk of being prosecuted.

The emergence of digital platforms and the presence of disrupters in almost every sector is already affecting the ACCC's approach to regulation. Companies that are looking to operate in the digital space, or incumbents that are looking to acquire new players, need to be mindful of this shift in attitude in making business decisions.

CONSUMER LAW

WHAT ARE THE EMERGING ISSUES?

- ACL reform
- Increased penalties for ACL breaches
- Unfair contract terms in insurance contracts

NEW WAVE OF ACL REFORM

The *Treasury Laws Amendment (Australian Consumer Law Review) Act 2018* (**the ACL Review Act**) came into force in October 2018. The ACL Review Act amended the *Australian Securities and Investments Commission Act 2001* (Cth) (**the ASIC Act**), *Competition and Consumer Act 2010* (Cth) (**the CCA**), and the ACL, set out in Schedule 2 of the CCA.

Key amendments included:

- extending the prohibition against unconscionable conduct in the ACL to also protect public companies;
- improvements in price transparency for certain 'optional extras'; and
- expanding the definition of financial services in the ASIC Act to include financial products.

INCREASED PENALTIES FOR BREACHES OF THE ACL

Companies and directors should be aware of the increase in penalties for contraventions of the ACL that came into force in September 2018.

The CAANZ Final Report concluded that the existing penalties for corporations and individuals were insufficient to deter non-compliant conduct. CAANZ found that some companies viewed penalties as a cost of doing business as opposed to a deterrent to contravening the ACL and therefore proposed that the penalties should be increased to match those in the CCA.

The *Treasury Laws Amendment (2018 Measures No.3) Act* (Cth) (**TLA**) was passed by Parliament in August 2018 and significantly increased the penalties for breaches of the ACL.

With the introduction of the TLA, an individual can now be fined up to AUD 500,000 for each contravention of a number of restrictive trade practices and the fine for breach by a corporation has increased to the greater of:

- AUD 10 million;
- three times the value of the benefit received; or
- if a benefit cannot be determined, 10% of the business turnover in the preceding 12 months.

HIGHEST ACL PENALTY FOR CORPORATION AND INDIVIDUAL

In *Australian Competition and Consumer Commission v We Buy Houses Pty Ltd (No 2)* [2018] FCA 1748, the Federal Court of Australia imposed the highest ACL penalty to date against We Buy Houses (AUD 12 million) and its sole director Mr Otton (AUD 6 million) for making false or misleading representations.

We Buy Houses and Mr Otton were found to have targeted disadvantaged and vulnerable consumers who hoped to enter the housing market or invest money in real estate. Free seminars, paid 'boot camps', and mentoring programs advised consumers that they would be able to buy a house for AUD 1 without a deposit, quit their jobs, and start making profits immediately. Between 2011 and 2014, We Buy Houses had generated significant revenue from these training programs.

The focus on enforcement of the ACL by the ACCC will no doubt result in greater consumer awareness of this legislative framework. Consumers are asserting their rights with reference to the ACL more frequently and are gaining a greater awareness of circumstances when they may be able to claim a replacement, refund or consequential damages.

UNFAIR CONTRACT TERMS IN INSURANCE CONTRACTS

Currently, section 15 of the *Insurance Contracts Act 1984* (Cth) provides an exemption from the unfair contract terms (**UCT**) regime in the ACL and the ASIC Act for insurance contracts. However, both the 2017 Australian Consumer Law Review and the 2018 Parliamentary Inquiry into Life Insurance found that this exemption was inconsistent with the intention of the UCT regime and consumer law.

The Government released a proposal paper in June 2018 that recommended that the UCT regime be extended to insurance contracts. The Financial Services Royal Commission also recommended that this change be introduced.

The extension would void unfair terms in standard form insurance contracts with consumers and small businesses. Unfair terms include those which create a significant imbalance in the parties' rights which are not reasonably necessary to protect the interests of the advantaged party and would cause detriment or disadvantage to the other party.

Under the exposure draft legislation, exemptions are provided under:

- define the main subject matter of the contract;
- relate to the upfront price payable under the contract; and/or
- are required or permitted under law.

Recognising the unique features of insurance contracts, the government proposes to tailor the regime for insurance contracts as follows:

- the main subject matter exemption will extend narrowly to those terms that describe what is being insured under the policy;
- the upfront price payable exemption will cover terms related to the premium and excess payable under the policy;
- policies which provide the insured with options of cover will be considered standard form contracts; and
- terms which do not reflect the underwriting risk accepted by the insurer will be exposed to the UCT regime.

Terms that focus on limits on liability and premium payment terms, may not be exempt from the UCT regime.

Once the reforms are implemented, insurers will need to give close consideration to the policy terms that they are including in standard form contracts with consumers and small businesses. Particular areas of risk include excess payments, exclusions and defined terms that have uncommon meanings and there is likely to be an increased requirement to justify such provisions through actuarial data.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

Businesses who deliver goods or services to consumers or small businesses must ensure they understand the growing importance of the ACL in the consumer law space. The review of the ACL in 2017 has already triggered a toughening of the ACL regime and the associated penalties. We expect the ACCC's focus on the use of the ACL to continue and where appropriate, they will look to raise the profile of the ACL by running high profile cases.

Following the Financial Services Royal Commission there is also a significant push to improve the legal protections for retail customers in the financial services space and the removal of various existing exceptions for insurers under the unfair contract terms regime is one such example.

These initiatives will no doubt result in greater awareness amongst consumers as to their legal rights. Businesses must be cautious to avoid misrepresenting the scope and application of the ACL as this act in itself can also result in significant penalties.

Risk and compliance

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WHISTLEBLOWING

ENHANCED WHISTLEBLOWER PROTECTIONS

The *Treasury Laws Amendment (Whistleblowers) Act 2019* (Cth) (**Whistleblower Act**) passed both houses of Parliament on 19 February 2019 and received Royal Assent on 12 March 2019. The new whistleblower regime entered into force on 1 July 2019.

The Whistleblower Act creates a single whistleblower protection regime within the *Corporations Act 2001* (Cth) (**Corporations Act**) which covers the corporate, financial, and credit sectors.

The existing whistleblower provisions across a range of different legislation have been consolidated, and offences under a number of different laws are deemed to be conduct which could be subject to disclosure under the new regime.

The definition of eligible whistleblowers who will be protected has been significantly extended to include both current and former officers, employees and suppliers, associates of such persons, and relatives of such persons.

Disclosure will now be able to be made to a wider range of persons including:

- designated eligible recipients (including officers, senior managers and various regulators);
- a legal practitioner, for the purposes of seeking legal advice; and
- in defined circumstances, to members of parliament of the Commonwealth or a State or Territory and/or to journalists.

Under existing corporate whistleblower regime, there is a requirement that a whistleblower acts in "good faith". In the Whistleblower Act, no such requirement exists and therefore the motives of a whistleblower cannot be taken into account in determining whether a disclosure qualifies for protection. Further, whistleblowers who make disclosures will be entitled to anonymity.

Whistleblowers will have increased access to compensation where they have been victimised or where their identity is revealed. Such compensation will be payable by both individuals involved in the victimisation or identity disclosure, and bodies corporate.

The Whistleblower Act as passed reflects a number of changes introduced by the Senate including:

- a disclosure will not be protected for a personal work-related grievance;
- low level supervisors and managers are excluded from the class of persons to whom a disclosure can be made;
- whistleblowers have the ability to make a claim for compensation against a company if the company allows a third party to victimise the whistleblower;
- due diligence was removed as a complete defence to certain compensation orders (but it is one factor that Courts can consider);
- introduction of a six-month period following commencement for companies to comply with the requirement to have a whistleblower policy; and
- an increase in penalties in line with the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* (Cth).

Civil and criminal penalties will apply to those persons involved in victimisation, or threatened victimisation, of a whistleblower and persons who breach the requirement to protect the identity of a whistleblower.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

Public companies and large proprietary companies (as defined in the Corporations Act) will need to put in place a whistleblower policy by 1 January 2020.

Australian public and large proprietary Companies will need to review their company's existing whistleblowing policies and programs to ensure they address the key features required under the incoming whistleblower legislation.

The policy should be easily accessible to all staff and the program should be regularly communicated to ensure continued staff awareness. Mandatory training is recommended for all staff on a regular basis, and key staff who are responsible for the core elements of the program should be nominated.

Even if a company is not required to put in place a whistleblower policy, it is important to recognise that all whistleblowers must still be treated in accordance with the requirements of the new regime. The protection of whistleblowers is paramount, and we recommend that any report that may qualify as a whistleblower report is treated with appropriate sensitivity within your organisation.

MODERN SLAVERY

COMMONWEALTH MODERN SLAVERY LEGISLATION

On 29 November 2018, the *Modern Slavery Act 2018* (Cth) (**the Modern Slavery Act**) passed both houses of Parliament and received Royal Assent on 10 December 2018. The legislation entered into force on 1 January 2019.

The Modern Slavery Act requires all Australian entities, or entities carrying on business in Australia, with consolidated revenue of at least AUD 100 million in a given financial year, to prepare an annual Modern Slavery Statement and file it with the Government. There is provision for related entities to prepare a joint modern slavery statement. Entities with turnovers of less than AUD 100 million may prepare a statement voluntarily.

In order to prepare an annual statement dealing with risks of modern slavery, companies will need to give consideration to the jurisdictions in which they operate, whether they are in a high risk industry sector and particular points of vulnerability in their supply chains.

In preparing an annual Modern Slavery Statement, reporting entities must include information on:

- the reporting entity's structure, operations and supply chains;
- the modern slavery risks within its operations and supply chains;
- the actions taken to assess, address, and remediate modern slavery risks, including due diligence and remediation processes; and
- how such actions will be assessed for effectiveness.

Reporting entities will be required to prepare an annual statement. This statement must be prepared within six months of the end of each financial year or accounting period.

A Modern Slavery Statements Register will be established by the Minister for Home Affairs, which will be available for public inspection on the Department of Home Affairs' website.

The Minister for Home Affairs will have the power to request a written explanation if an entity fails to submit an annual Modern Slavery Statement and, if such a request has been made, may publish information on the Modern Slavery Register identifying the entity and its failure to provide a Modern Slavery Statement.

NEW SOUTH WALES MODERN SLAVERY LEGISLATION

Similar legislation was passed by the New South Wales State Government in June 2018 which requires organisations with employees in NSW that supply goods and services with an annual turnover of at least AUD 50 million to prepare a statement. The NSW legislation also establishes an Anti-Slavery Commissioner.

The NSW legislation also establishes an Anti-Slavery Commissioner and imposes financial penalties (up to AUD 1.1 million) for non-compliance.

The NSW legislation has not yet entered into force and concerns have been raised about the scope of the legislation, and its interaction with the Commonwealth legislation from a constitutional perspective. The legislation has been referred to the Legislative Council Standing Committee on Social Issues for inquiry and report.

It is uncertain whether the NSW legislation will proceed. If it does proceed, those companies who have issued an annual statement under the Commonwealth legislation will not be required issue a further statement.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

From 2019, compliance teams will need to devote resources to developing policies and procedures to facilitate:

- the identification and reporting of modern slavery risks and practices;
- the development of measures to address and remediate those risks;
- the assessment of the effectiveness of those practices; and
- the preparation of Modern Slavery Statements.

The public access to statements may expose businesses to reputational and financial pressures from shareholders, non-government organisations, and customers where modern slavery risks are identified.

The critical first step is to undertake a risk mapping exercise to determine the potential exposure to the risk of modern slavery that your business faces, taking into account the nature of its supply chain. There are a range of due diligence measures that can be taken to address such risks including contractual obligations, audits processes, introduction of improved policies and procedures and training.

CORPORATE CRIME

A FEDERAL COURT CRIMINAL DIVISION

In November 2018, the Federal Treasurer announced the Government's intention to create a criminal jurisdiction in the Federal Court, which was further confirmed in the Government Response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Financial Services Royal Commission**). These announcements follow the large number of criminal prosecutions recommended by Counsel Assisting the Royal Commission.

The creation of a Federal Court Criminal Division is designed to redirect corporate crime prosecutions from heavily burdened state courts. With greater resourcing, the Government expects regulators to increase their prosecution of corporate misconduct, including the type of misconduct identified during the Financial Services Royal Commission.

REVIEW OF THE CORPORATE CRIMINAL RESPONSIBILITY

In April 2019, the Federal Government commissioned the Australian Law Reform Commission to review Australia's corporate criminal liability regime under part 2.5 of the Commonwealth Criminal Code.

The ALRC will be specifically looking at the role of corporate culture under section 12.3 of the Commonwealth Criminal Code, which allows a court to find a fault element of a crime committed by a corporation.

This can be in circumstances where corporations who have a culture of directing, encouraging or tolerating non-compliance with the relevant provision, or a culture which leads to non-compliance. Alternatively, the circumstances may involve a corporation failing to create or maintain a corporate culture of compliance with the relevant provision, which may mean that the corporation is found to be at fault.

This is a great concern for directors and officers who could be found criminally liable for the criminal offences committed by their companies whether or not they had knowing involvement.

The report is due to be finalised by 30 April 2020.

OFFICE OF ENFORCEMENT

Following the release of the Final Report of the Financial Services Royal Commission, ASIC has announced a new Office of Enforcement. The Office of Enforcement is responsible for carrying out ASIC's key enforcement activities. The enforcement function is now separate from ASIC's regulatory teams.

After ASIC was heavily criticised in the Final Report for not commencing litigation against wrongdoers as often as necessary to deter such conduct, the approach of the Office of Enforcement is stated to be "Why Not Litigate?". Thirteen matters were referred to ASIC by the Financial Services Royal Commission for prosecution and these are being managed by the Office of Enforcement. The Office is also investigating a number of other matters.

There is an expectation that with the new focus on enforcement and the introduction of increased penalties for breaches of general obligations by financial services licence holders, there will be a significant increase in the volume of litigation against corporate Australia.

There had already been an uptick in criminal cases brought against individuals and corporations and this is certainly a trend that is likely to continue.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

Business leaders should stay alert to changes in this space as the Government has signalled it intends to enhance the legislation in this area to facilitate prosecutions of corporate offences.

It is anticipated that the Commonwealth Director of Public Prosecutions will use this additional regulatory firepower to pursue enforcement outcomes. Business leaders should review the corporate culture and compliance policies and frameworks of their business.

ASIC also has a clear mandate to pursue corporate criminal conduct through its Office of Enforcement.

Businesses need to be mindful of the significant penalties that now apply to a range of corporations law offences and that the community expectation is that wrongdoers will be punished, both at the corporate and individual levels.

The risk of prosecution reinforces the importance of managing legal and regulatory risk within an organisation and ensuring that any wrongdoing is detected early and where necessary, that appropriate reporting and remediation is undertaken.

Financial services regulation

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FINANCIAL SERVICES ROYAL COMMISSION

On 1 February 2019, the Financial Services Royal Commission Final Report (**Final Report**) was issued by Commissioner Hayne to the Australian Government. The Final Report, and legislative developments over the past 12 months, point clearly to a more robust enforcement environment for corporates in the financial services industry going forward.

The Australian Government and regulators have already started to respond to issues identified in the Financial Services Royal Commission through a range of initiatives that have been announced and further reform is anticipated given the focus areas signalled by each of the regulators in this space.

Over the past 12 months there have been a number of regulatory initiatives announced by the Australian Government and regulators including:

- Australian Prudential Regulation Authority (**APRA**) released its report on its own enforcement strategy review on 29 March 2019. The enforcement strategy review examined APRA's approach to prospective use of its enforcement powers to achieve its prudential objective of ensuring financial promises made by its supervised institutions are met within a stable, efficient, and competitive financial system;
- significant funding increases for the Australian Securities and Investments Commission (**ASIC**) (over AUD 400 million), APRA (over AUD 150 million), the Commonwealth Department of Public Prosecutions (AUD 51.5 million) and the Federal Court of Australia (AUD 35 million);
- a new supervisory approach that involves embedding ASIC officers in major financial institutions and a new office of Enforcement; and
- the Australian Government has announced the establishment of a Committee of Regulatory Enforcement Strategy, to be chaired by the Attorney-General's Department.

An implementation roadmap has also been announced which will see all the Financial Services Royal Commission recommendations requiring legislation introduced by the end of 2020.

FINANCIAL SERVICES ROYAL COMMISSION IMPLEMENTATION ROADMAP

Recommendation 2.4	Ending grandfathered commissions for financial advisers	Legislation to be consulted on and introduced by end-2019
Recommendation 4.2	Removing the exemptions for funeral expenses policies	
Recommendation 4.7	Application of unfair contract terms provisions to insurance contracts	
Recommendation 4.8	Removal of claims handling exemption for insurance	
Recommendation 4.1	No hawking of insurance products	Legislation to be consulted on and introduced by 30 June 2020
Recommendation 4.3	Deferred sales model for add-on insurance	
Recommendation 4.4	Cap on commissions paid to vehicle dealers for sale of add-on insurance products	
Recommendation 4.5	Duty to take reasonable care not to make a misrepresentation to an insurer	
Recommendation 4.6	Limiting circumstances where insurers can avoid life insurance contracts	
Recommendation 4.2	Restricting use of the term 'insurer' and 'insurance'	
Recommendation 4.12	Extending the BEAR to APRA-regulated insurers	Legislation to be consulted on and introduced by end-2020

PRODUCT DESIGN AND DISTRIBUTION

The Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019 (Cth) (**Product Design and Distribution Act**) received Royal Assent. The Product Design and Distribution Act amends the *Corporations Act 2001* (Cth) (**Corporations Act**) to insert a new Part 7.8A – Design and distribution requirements relating to financial products for retail clients and a new Part 7.9A – Product intervention orders.

The *National Consumer Credit Protection Act 2009* (Cth) (**the Credit Act**) was also amended.

PROPOSED PRODUCT DESIGN AND DISTRIBUTION OBLIGATIONS

Under the Product Design and Distribution Act, design and distribution obligations will be imposed on "regulated persons" for certain products which have disclosure requirements under the Corporations Act within the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

The term "regulated persons" is defined to include:

- the issuer of a financial product;
- any person required to hold a financial services licence (or who is exempt from holding such a licence by a specified provision);
- any authorised representative of such a licensee; and
- sellers of financial products where the sale requires a disclosure document or Product Disclosure Statement (**PDS**).

The amendments are aimed at ensuring that financial products are targeted at an appropriate audience.

PRODUCT DESIGN OBLIGATIONS ON ISSUERS

Under the new legislation, the person who is responsible for preparing the disclosure document for the product (i.e. the product issuer) will now be required to:

- make a "target market determination" for a product;
- keep the target market determinations under review;
- keep records about decisions regarding target market determinations; and
- notify ASIC of significant dealings inconsistent with target market determination.

DISTRIBUTION OBLIGATIONS ON PRODUCT DISTRIBUTORS

New distribution obligations will also be imposed on the person responsible for making offers, or giving advice or disclosure documents to potential investors (i.e. product distributors).

A product distributor will be prohibited from engaging in retail product distribution conduct unless a target market determination has been made, or engaging in retail product distribution conduct where a target market determination may no longer be appropriate.

In addition, the product distributor will be under an obligation to:

- take reasonable steps to ensure that retail product distribution conduct is consistent with the target market determination;
- collect and provide information specified by the product issuer and complaints related to the distribution of a product; and
- notify the product issuer of significant dealings inconsistent with the target market determination.

What is reasonable will depend on the scale of harm of the product if wrongly distributed, as well as the probability of it being wrongly distributed.

NEW PRODUCT INTERVENTION POWERS FOR ASIC

The new product intervention powers under the Product Design and Distribution Bill permits the Australian Securities and Investments Commission (**ASIC**) to proactively intervene to reduce harm to consumers before a breach occurs. This may include regulating or banning potentially harmful financial and credit products where there is a risk of significant detriment to retail clients.

Where a product is determined by ASIC to cause significant detriment to consumers, ASIC will be able to issue a stop order and take other action that it considers appropriate.

Factors which will be relevant to ASIC's determination as to whether consumer detriment is "significant" for the purposes of this new power include: the nature and extent of the detriment (including any actual or potential financial loss to retail clients), and the impact of the detriment on retail clients.

ASIC will be required to satisfy consultation and notification obligations before an intervention order is made.

PROPOSED PENALTIES

Contravention of the obligation under the proposed regime will include both civil penalties and criminal offences. There will be maximum criminal penalties of up to AUD 42,000 or imprisonment for 5 years or both. Following the commencement of the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act* 2019 (Cth), maximum civil penalties of AUD 1.05 million or three times the benefit derived and detriment avoided because of the contravention for an individual andfor a corporation, the greater of (based on current value of AUD 210 per penalty unit):

- AUD 10.5 million;
- three times the value of the benefit derived from the contravention; and
- 10% of the company's annual turnover, capped at AUD 525 million.

In addition, it is proposed that a person who suffers loss or damage because of contravention of the obligations under the Product Design and Distribution Bill (including where an entity fails to make a target market determination) may be able to recover that loss by civil action.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

The product design and distribution obligations will take effect in April 2021, following a two year transitional period.

During the transitional period, financial product issuers and distributors will have to review their current product design, distribution frameworks, and product target markets in light of the proposed obligations. There are no grandfathering provisions for existing products so consideration of the appropriate target market will also be required for products that are already on the market.

Existing product disclosure obligations will continue in force so insurers and insurance distributors will need to comply with multiple sets of consumer protection obligations in dealing with retail insurance products going forward.

Privacy and data protection

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WHAT ARE THE EMERGING ISSUES?

- Notifiable Data Breaches
- Consumer Data Right
- Higher penalties
- Data surveillance

NOTIFIABLE DATA BREACHES SCHEME – ONE YEAR ON

The Notifiable Data Breach (**NDB**) Scheme came into effect in February 2018. In circumstances where an organisation identifies unauthorised access to, disclosure of, or loss of personal information that is likely to result in serious harm to an individual, this is deemed an 'eligible data breach' under the *Privacy Act 1988* (Cth) (**Privacy Act**). Eligible data breaches must be notified to the Office of the Australian Information Commissioner (**OAIC**) and affected individuals.

Failure to notify an eligible data breach may result in fines of up to AUD 2.1 million. As a result, entities with annual turnover of AUD 3 million or more (which is the threshold for the NDB Scheme) have been required to meet higher compliance obligations in the past 12 - 18 months while still combating the rise in evolving cyber threats.

The OAIC has released its 12-month Insights Report into the frequency, targets and common failings of data breaches since the NDB was introduced.

In summary, between 1 April 2018 and 31 March 2019:

- over 964 notifications were made to the OAIC, including more than 100 breaches of more than 1,000 people and 10 affecting more than 100,000 people;
- there has been a 712% increase in notifications since the introduction of the NDB Scheme;
- contact and financial details were the most commonly affected information;
- health services providers are the top reporting sector, followed by finance, and then legal, accounting, and management services; and
- malicious cyberattacks and human error are the two most commonly attributed sources of data breaches (making up 95% of all reported data breaches), with phishing attempts compromising credentials the most successful tactic employed by malicious third parties.

Despite the substantial data collected and published by the OAIC since the NDB Scheme commenced, no enforcement action has yet been taken against any Australian businesses for failing to comply with the NDB Scheme.

HIGHER PENALTIES ON THE WAY

In March 2019, the Australian Government announced amendments to the Privacy Act including a suite of increased penalties. The amendments will:

- increase the maximum penalty of AUD 2.1 million for serious or repeated breaches to AUD 10 million, or 3x times the value of any benefit obtained through misuse of information, or 10% of a company's annual domestic turnover, whichever is the greater; and
- provide the OAIC with new infringement notice powers for failure to cooperate with efforts to resolve minor breaches, including new penalties of up to AUD 63,000 for bodies corporate and AUD 12,600 for individuals.

If introduced, these changes will apply to any organisation or government agency subject to the Privacy Act, including those operating within, and also potentially outside of, Australia.

These changes are being backed by an AUD 25 million increase to the OAIC's funding over the next 3 years.

The potential for increased financial penalties (and a new willingness of the OAIC to publicise breaches where it sees fit) creates an additional risk to an entity's reputation and its bottom line, should an incident occur. This added risk should drive entities to treat privacy risk as a significant whole of business issue.

INCOMING CONSUMER DATA RIGHT

On 29 March 2019, the Australian Competition and Consumer Commission (**ACCC**) published its draft rules for how the Consumer Data Right (**CDR**) will apply to the banking sector.

The CDR is intended to provide Australians with greater control over their data and, while commencing in the banking sector, it will eventually apply across a range of sectors

Customers will be empowered to obtain certain data held about them and also choose to share their data with certain third parties only for purposes they have authorised. This will enable consumers to compare between products and services and switch to more competitive service providers.

The CDR is scheduled to be rolled out across the banking sector from July 2019, with industries such as energy and telecommunications to follow.

Under the recently released banking proposal, methods of requesting CDR data include:

- product data requests, where individuals may request CDR data that relates to a product offered by the data holder; and
- consumer data requests, where individuals may request data that relates to themselves. Alternatively, an accredited person may request CDR data on behalf of a consumer for the purpose of providing goods or servicing under a CDR contract with that individual.

From 1 July 2019 the rights will apply to all major banks in relation to data on credit, debit cards, deposit, and transaction accounts. Data right on mortgages from major banks will become accessible in February 2020 and remaining products by July 2020. All other banks will follow the same roll-out starting 12 months after the major banks and the ACCC will have the power to adjust timeframes if necessary.

The ACCC has flagged the commencement of CDR in the energy sector for the first half of 2020 and Treasury has hinted at the CDR being implemented economy-wide, based on the advice from the ACCC and the OAIC.

DATA SURVEILLANCE

The *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (**the Assistance and Access Act**) passed both houses of Parliament on 6 December 2018 and took effect on 9 December 2018.

The Assistance and Access Act provides government agencies with powers to intercept and monitor electronic communications including communications that are protected by encryption technology. Under the Assistance and Access Act, technical capability/assistance notices can be issued to companies by Australian government agencies, requiring them to remove any encryption and secure authentication on both devices and services so as to allow access to the data. Technical assistance requests may also be issued although compliance is voluntary.

The Assistance and Access Act has been met with significant resistance, particularly from technology companies who argue that alteration to their systems to allow for compliance of technical capability notices will weaken their data security protocols and create backdoors which may potentially expose other consumer data. There are also concerns that exporting Australian technology will become more difficult.

LITIGATION REVIEW

There has been a limited amount of privacy litigation commenced against companies and government agencies, and no successful class actions through the Courts. This is a result of various shortcomings in the Australian legal landscape and legislative framework, which in its current form is not sufficiently robust to provide affected individuals with appropriate avenues to easily seek redress following a mishandling or breach of their data.

However, the now infamous March 2018 'Cambridge Analytica' incident, which involved alleged unauthorised access to and misuse of personal information of users of social media giant Facebook, may change this. The OAIC is formally investigating the incident. The overall findings, determination and willingness of the OAIC to award compensation has the potential to fundamentally impact the operation of Australia's privacy regime, particularly as it could provide affected individuals with the ability to claim compensation en masse, when their data is affected by a data breach, or if there is mishandling of their data in contravention of privacy laws and regulations.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

Cybersecurity will continue to be a key business focus for organisations in 2019. As a large percentage of human error is involved in breaches reported to the OAIC, businesses should implement robust privacy governance alongside a high-standard of security. The risk of a data breach can be greatly reduced by carrying out privacy impact assessments and information security risk assessments.

Business leaders should continue to develop and test data breach response plans to ensure they have a strategy that satisfies the requirements of the Privacy Act and that all relevant stakeholders understand their responsibilities in executing the plan. The plan should be regularly revisited, tested and updated and employees should be regularly trained about the risks of malicious and non-malicious (e.g. human error) data breaches and what they should do in the event a data breach occurs. This will allow the organisation to look after affected individuals and properly discharge its compliance obligations.

Occupational health and safety

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2018 PROSECUTIONS

248

completed and published prosecutions under health and safety laws around Australia.

The range of penalties imposed across all

248 cases

suggests a need for sentencing guidelines to improve consistency of outcomes.

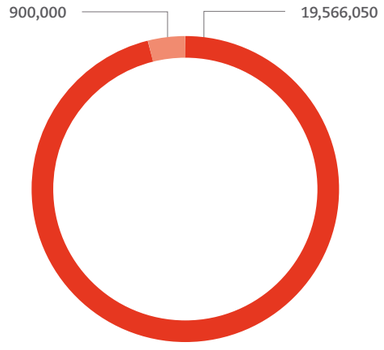
The highest average penalty was in South Australia with **AUD 171,500**, followed by the Northern Territory with **AUD 166,000** and the lowest in Victoria with **AUD 69,252** (excluding those jurisdictions with only one completed prosecution).

136 of 294 charges

The most actively used provisions remain allegations of breaches of the primary duty of an organisation to its workers. Of all charges brought in 2018, **136 of 294,[1] or 46.3%**, were for breaches of the primary duty owedto workers.

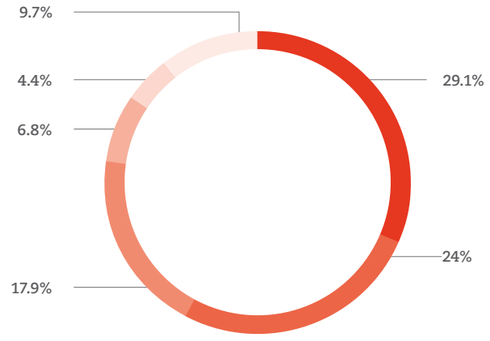
1 Some prosecutions involved charges being laid under more than one provision of legislation.

A total of **AUD 19,566,050** was imposed in fines across the completed and published prosecutions (with the majority commenced against organisations). The highest penalty imposed was **AUD 900,000** in *Orr v Cudal Lime Products Pty Ltd* [2018] NSWDC 27.



The vast majority of the prosecutions relate to:

- **29.1%** Risks associated with plant - cranes, cranes, forklifts, excavators, failures in traffic management, vehicle interaction/movements and/or the maintenance of exclusion zones, guarding failures,
- **24%** Work at height
- **17.9%** Falling object
- **6.8%** Licensing and compliance
- **4.4%** Hazardous or flammable substances
- **9.7%** Young people and apprentices



The most active jurisdictions for completed WHS prosecutions in 2018 were:

Together, these jurisdictions accounted for

92%

of prosecutions.

Contractor management and issues associated with failure to effectively consult, coordinate, or cooperate on health and safety matters with other duty holders were relevant in approximately

45%

of prosecutions nationally.

The construction and manufacturing industries represent

58.30%

of all prosecutions.

OFFICER PROSECUTIONS AND THE FIRST GAOL SENTENCES FOR HEALTH AND SAFETY OFFENCES

2018 saw the first instances of Australian courts handing down gaol sentences under Australian health and safety laws, with the first officer sent to gaol for a Category 1 officer prosecution.

In Victoria, Maria Jackson was sentenced to 6 months' goal for her role as the manager and controller of a scrap metal business following the death of a worker when the bin he was standing in, elevated on a forklift, fell and crushed him. That forklift was operated by Ms Jackson (unsafely) and in circumstances where Ms Jackson did not hold a forklift licence. Jackson's case demonstrates that courts will consider gaol sentences for reckless conduct endangering safety.

In Queensland, sole director Gary Lavin was sentenced to 12 months' gaol (suspended after 4 months) for a breach of the officer due diligence obligation in relation to his decision making on safety which led to the death of a worker when he fell 6 metres following the failure to install necessary edge protection at a construction site. Lavin decided not to install edge protection on a roofing job to cut costs in the work. Lavin's case at first instance was a demonstration of a long standing principle that the cost of safety measures is not a reasonable excuse for failing to implement mandatory controls for significant and well known safety risks. However, this conviction was overturned in May 2019 following a finding by the Court of Appeal that the jury was misdirected as to the elements of the Category 1 offence. With the Court of Appeal providing further guidance on the meaning of 'reasonable excuse', and a retrial ordered (a date is expected to be set down on 19 September 2019), duty holders should pay close attention to future developments.

There were a total of 20 completed and published prosecutions of officers in 2018. The highest penalty against an officer was AUD 102,500 in the Western Australian case against Ryan Wayne Franceschi who was the director of a construction business.

WORKER PROSECUTIONS

It appears we have a 'new normal' with the trend of worker health and safety prosecutions continuing. Personal prosecutions of workers in 2018 were commensurate with the cases completed in 2017 (9 completed prosecutions in 2018 compared to 8 completed prosecutions in 2017). There were 9 completed and published worker prosecutions. The majority of these prosecutions were commenced in Queensland with 5 worker prosecutions, followed by New South Wales with 2 and 1 each in Victoria and Western Australia. There were a total of AUD 118,600 in penalties against individual workers with the highest penalty imposed on a worker being AUD 48,000 in *Orr v Cudal Lime Products Pty Ltd* [2018] NSWDC 27.

ORGANISATIONAL PROSECUTIONS

While the level of penalties against organisations in 2018 was lower than 2017, the trend towards increasing penalties against organisations also continued. While the largest penalty awarded in 2017 was the record of AUD 1,300,000 against Downer EDI Works Pty Ltd, 2018 still saw a substantial penalty awarded in NSW against Cudal Lime Products Pty Ltd (Cudal). Cudal received a penalty of AUD 900,000 in *Orr v Cudal Lime Products Pty Ltd* [2018] NSWDC 27. This was after the application of a 25% discount due to an early guilty plea. The next highest penalty was AUD 500,000 in Victoria against Specialised Concrete Pumping Victoria Pty Ltd which involved a falling object in the construction industry.

Significantly, *Orr v Cudal Lime Products Pty Ltd* [2018] NSWDC 27 also represented the first successful Category 1 prosecution in any model WHS laws jurisdiction since the introduction of the WHS laws in 2012. Cudal operated an open-cut mine which had suffered a number of electrical faults resulting in notices being issued in 2007, 2009 and 2013 in respect of electrical maintenance issues. In an attempt to save costs, Cudal instructed an employee to complete electrical work on the switchboard for which he was not qualified. This resulted in the de facto partner of a worker who resided 200 metres from the mine suffering electrocution while in the shower. The Court held that the risks were foreseeable and deficiencies in the maintenance of cabling were 'obvious'.

The instruction to the employee was found to be reckless and it was reasonably practicable for Cudal to implement steps to eliminate or minimise the risks to workers, which they failed to do. Cudal pleaded guilty to the Category 1 offence in respect of breaching section 19(2) (the primary duty of care to other persons) of the *Work Health and Safety Act 2011* (NSW).

That first successful Category 1 prosecution has been followed by a further February 2019 successful Category 1 prosecution of Multi-Run Roofing Pty Ltd in Queensland (where a AUD 1 million penalty was imposed) in relation to the same incident that led to the Gary Lavin gaol sentence discussed above.

ENFORCEABLE UNDERTAKINGS

Enforceable undertakings (**EUs**) continue to be popular alternatives for organisations seeking to avoid criminal convictions. In 2018, a total of 23 EUs were accepted in Australia with a total value of actions under those undertakings amounting to AUD 17,061,911. This accounts for a 119% increase in the total cost of EU initiatives to businesses compared to 2017. The average value of enforceable undertakings in 2018 increased more than twofold from 2017. The average value in 2018 rose to AUD 1.8 million compared with AUD 800,000 in 2017.

2018 also saw the most expensive EU ever entered in Australia. The ACT Department of Education and Training committed to provide AUD 10 million in health and safety initiatives in and EU with WorkSafe ACT.

This substantially eclipsed the previous record in 2017 of AUD 1.5 million by Borg Manufacturing Pty Ltd. This caused the Australian Capital Territory to account for 60% of the total value of EUs entered in 2018 compared with just 4% in 2017.

While the regulators have a general policy not to enter into an EU in the context of a fatality, 2018 also saw the South Australian regulator enter into two EUs in respect of the same fatality. We have also seen WorkSafe Victoria requiring more innovative initiatives under EUs in Victoria with a focus on requiring initiatives related to safety leadership, culture, effective communication and worker engagement.

REGULATORY TRENDS

The trends outlined in our 2018 Regulatory Trends Report on the exercise of police powers and the need to take improvement and prohibition notices seriously continue to be trends into 2019. On the exercise of police powers, the charges comprising two counts of manslaughter under the Criminal Code 1899 (Qld) against Claudio D'Alessandro (the construction manager at the time of the Eagle Farm Racecourse fatalities) are next due before the Court for further directions on 16 August 2019.

The first successful Category 1 prosecution against Cudal in 2018 (discussed above) is also an example demonstrating how regulators are relying upon the historical non-compliance of organisations evidenced through improvement and prohibition notices as the basis for establishing recklessness to risk.

CONDUCT, CULTURE, COMMUNITY STANDARDS AND RAMIFICATIONS FOR WHS ENFORCEMENT

The public debate on the sufficiency of penalties in WHS prosecutions was noted in the Boland Report released in February 2019. This debate in the WHS space occurred in parallel with the broader discussion on community expectations of corporate culture and corporate criminal penalties that we saw in the Financial Services Royal Commission.

In 2019 and beyond, we expect to see more serious ramifications for organisations, officers and workers who breach community standards. There is currently a feeling in the community that penalties awarded by courts for WHS offences have been too low when compared to the objective seriousness of the offences and the devastating consequences suffered by individuals and the impact on their families. When combined with the community view that penalties imposed in different jurisdictions lack consistency, we expect in coming years to see the adoption of model sentencing guidelines. These guidelines will provide parameters for courts when imposing penalties and likely see an increase to the scale of penalties generally.

In addition, judges have recently expressed interest in imposing alternative non-monetary penalties for breaches of health and safety laws, particularly in NSW. These include making adverse publicity orders, restoration orders, work health and safety project orders and undertakings and training orders. We are already starting to see such alternative orders being made by the Courts. For example, in 2018 adverse publicity orders were made in *SafeWork NSW v KD & JT Westbrook Pty Ltd* [2018] NSWDC 255 and an officer was required to undertake 24 hours of safety training in *SafeWork NSW v Yan Huai Wu and Zenger (Aust) Pty Ltd* [2018] NSWDC 211. The trend has continued into 2019 with an officer required to undertake due diligence and health and safety risk management training in *SafeWork NSW v Macquarie Milling Co Pty Ltd; SafeWork NSW v Samuels* [2019] NSWDC 111.

HEALTH AND SAFETY LAW REFORM

We set out below a number of developments in WHS related legislative reform in 2018 and early 2019.

National

The Boland Report into the review of the model WHS laws was released in February 2019. The report found that the model WHS laws are "for the most part, working as intended, but they are still settling" as regulators continue to test and refine their compliance and enforcement strategies.

Despite this, the report made the following key reform recommendations to the model WHS laws:

- expand Category 1 offences to include conduct of 'gross negligence' exposing a worker to a risk of death, serious injury or illness;
- introduce model industrial manslaughter laws;
- develop model sentencing guidelines for WHS prosecutions (supported in principle by the Commonwealth Government);
- make an offence for insurers and insureds who provide indemnity for WHS penalties (supported in principle by the Commonwealth Government);
- review and amend the model regulations and codes, including to deal with the identification and control of psychosocial risks; and
- increases to maximum WHS monetary penalties.

The Commonwealth Government's in principle support comes from its response to the Report of the Senate Standing Committee of Education and Employment on The Framework Surrounding the Prevention, Investigation and Prosecution of Industrial Deaths in Australia. The government has also supported the idea of developing a national database of prosecutions for workplace fatalities

Queensland and Western Australia

Both states increased maximum penalties for organisations under WHS laws in 2018. In Queensland, maximum penalties for corporations whose breach of mining health and safety obligations results in multiple fatalities increased from AUD 261,100 to over AUD 3.9 million. In Western Australia, maximum penalties for repeat level 4 (the most serious) safety breaches increased from AUD 625,000 to AUD 3.5 million for corporations.

Victoria and Western Australia

The Boland Report re-emphasised the need for consistent harmonisation of WHS laws. Boland reiterated the need for Victoria and Western Australia to adopt the model WHS laws "as a matter of urgency". However, there is no indication that the two states will adopt the uniform laws. Indeed further inconsistencies appear to be developing even as states introduce new offences. By way of example, consider the amendments planned for Victoria in introducing further jurisdictional differences with respect to industrial manslaughter maximum penalties (as discussed below).

INDUSTRIAL MANSLAUGHTER LAWS

Queensland introduced industrial manslaughter laws in 2017 in response to the October 2016 Dreamworld fatalities. Under these laws, organisations and senior officers could be sentenced to jail terms of up to 20 years, or fines of AUD 13 million, if their negligence causes a worker to die while at work. The ACT has had similar criminal laws since 2004 for employers and officers whose reckless or negligent conduct causes a worker to die.

Despite media and political attention on industrial manslaughter in 2018, to date, only Victoria has taken serious steps towards introducing similar laws. The Victorian Government has announced an intention to introduce industrial manslaughter laws similar to those in Queensland. Under the proposal, organisations could be subject to AUD 16 million fines for workplace deaths while individuals could face 20 years imprisonment. A Private Members' Bill has been introduced in South Australia which proposes that organisations be subject to AUD 1 million fines and employers and officers liable to up to 20 years imprisonment.

The Boland Report released in February 2019 recommended the introduction of model industrial manslaughter laws where there is gross negligence that causes the death of a worker. Attention should be paid to the next Commonwealth Government's upcoming response to the report. Had the Labor Opposition won the 2019 Federal Election, it is likely that we would have seen the introduction of an industrial manslaughter offence in the Commonwealth Act within the first 12 months of government. The Coalition Government's view before the election was that the current criminal manslaughter laws are able to address workplace deaths for all those responsible. In any event, the Boland Report is currently subject to a regulation impact statement process being undertaken by Safe Work Australia with public submissions open until 5 August 2019. Australia's WHS Ministers will consider the Boland Report and the impact statement later in 2019.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

We can expect WHS regulation to remain the subject of much commentary, both in terms of law reform following the Boland Report and in relation to the approach to enforcement by regulators around the country.

In the early months of 2019, there have been a number of tragic fatalities, particularly in the construction industry. The early information available in those cases suggest that cranes, scaffolding, electricity, working at height and young workers will continue to be areas of focus for regulators in their enforcement activities. Organisations need to be aware that the consequences for such workplace fatalities are increasing (for both individuals and companies). This is due to the changes in industrial manslaughter offences, police interest in workplace fatalities and the first instances of individuals serving goal time in Australia for offences under WHS laws. Where traditionally, organisations have had incident notification, response and investigation protocols that treat all serious incidents in a similar way, there is now a need to actively consider specific fatality protocols to deal with the changing regulatory environment when a death occurs at a workplace.

Businesses (including insurers) should also be aware of the likelihood that the Government will consider introducing offences in 2019 for providing or obtaining insurance in respect of the penalties imposed in work health and safety prosecutions, particularly given that this position has already received in principle support from both sides of politics.

Following the imprisonment of both Maria Jackson and Gary Lavin, there should be a renewed emphasis on the part of directors and officers in making sure they comply with their personal due diligence obligations. We recommend that officers and workers are provided with briefings to gain an understanding of the way their health and safety duties are being interpreted by regulators and courts in practice.

Organisations will also need to come to grips with further specific legal requirements for proactively dealing with psychosocial risks. Such provisions are likely to be introduced, at least at the WHS Regulation and Code of Practice levels once the Boland Report recommendations are taken up around the country. In that regard, organisations should start familiarising themselves with the "A Work-related psychological health and safety: A systematic approach to meeting your duties" guidance released by Safe Work Australia, and amended in January 2019, as this provides some insight into the type of standards we can expect to see in any such reform.

Environmental regulation

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CONTAMINATION

WHAT ARE THE EMERGING ISSUES?

- Class actions
- Likely remediation costs
- Challenging regulatory environment

Land contamination by per- and poly-fluoroalkyl substances ('PFAS' or 'PFOS') firefighting foams continues to challenge health and environmental regulators and landowners.

PFAS are a group of manufactured chemicals contained in household and industrial products that resist heat, stains, grease, and water. PFAS have been used as effective ingredients in fire-fighting foams.

An expert health report commissioned by the Commonwealth Department of Health in March 2018 found the impacts on human health of exposure to PFAS were inconclusive and that further research was recommended.

NEW MANAGEMENT PLAN

The PFAS National Environmental Management Plan (**NEMP**) was published in February 2018 and provides a nationally-consistent approach to the environmental regulation of PFAS in Australia. A review of the PFAS NEMP is currently taking place to clarify and expand on the guidance in the NEMP, with written submissions by stakeholders to take place between March and May 2019.

CURRENT RENEWS

A number of potentially contaminated sites are currently being investigated by the New South Wales PFAS Taskforce, which includes regulators such as the New South Wales (**NSW**) Environmental Protection Authority (**EPA**), NSW Health, and the Department of Primary Industries. The Taskforce recommends that communities close to where the fire-fighting foams were used in the past do not drink contaminated water sources or eat food that has been exposed to PFAS.

The Victorian EPA (**VIC EPA**) has undertaken site investigations at Country Fire Authority's (**CFA**) historical training sites. Environmental assessments have been conducted at seven of CFA's training centres, with site rehabilitation and ongoing environmental monitoring regulation by the VIC EPA.

Testing for contamination was conducted of the waterways, drains, and groundwater with a focus on testing outside the boundary of the training sites.

Class actions loom large, with IMF litigation funding three class actions against the Department of Defence relating to PFAS migration from three RAAF sites, and exploring class actions for 15 other RAAF sites.

CASE STUDY

Moreland City Council v Verve Constructions Pty Ltd; Moreland City Council v Future Estate Group Pty Ltd [2019] Victorian Magistrates Court

The developer, builder, owner and Director of an eight-storey apartment building development in Pentridge were found to have breached a Council planning permit, by commencing the development prior to finalisation of an Environmental Audit relating to suspected land contamination from a former prison at the site. The parties were fined a total of $36,000.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

In light of the potential environmental, legal and health risks that PFAS pose to businesses, including their employees, customers, and other stakeholders, business leaders with land holdings with historical fire sites should determine whether their site has been contaminated by PFAS. If so, businesses should seek advice on the appropriate steps to contain the contamination and minimise the risk of exposure.

Regulators have the ability to take action for breaches of environment and planning legislation against not just the offending company, but also contractors, managers, and directors. Directors and principals should be aware of this personal liability, and ensure that the company implements processes to ensure that employees and contractors are aware of their obligations and comply with them.

ENVIRONMENTAL CRIME

WHAT ARE THE EMERGING ISSUES?

- Cooperation between regulators to detect environmental crime
- Use of specialised taskforces
- New duty to report in Victoria

NEW TASKFORCES

Environmental regulators are increasingly working together to widen their scope for the detection of environmental crimes.

Specialised taskforces represent a new way for environmental regulators to identify non-compliance, beyond the usual sources of community complaints and self-reports. We have observed that regulators are working together to share information about non-compliance, leading to opportunities for multiple regulators to take action in relation to the same incident or offender.

Examples of specialised or joint task forces include:

- An inter-governmental task force in response to the enforcement of the China National Sword Policy, which limits the type of recyclable material China will accept. The taskforce aims to facilitate immediate interventions as well as long-term solutions in response to the changes. The taskforce is led by the New South Wales (**NSW**) Environmental Protection Authority (**EPA**) and includes partnership with NSW Treasury, Fire & Rescue NSW, Roads and Maritime Services (**RMS**), and the Department of Planning and Environment.
- 'Operation Catapult' established a task force with the NSW Police, RMS, and EPA in which 49 heavy vehicles working on the WestConnex project were inspected. The EPA inspected for environmental issues like contamination of soil, and RMS and NSW Police inspected for overweight loads, suspended licences, non-compliance vehicles, and driving under the influence.
- 'Operation Dust Patrol' is a NSW EPA task force to monitor compliance with controls on dust from coal mines in the Hunter Valley.
- 'Waste Crime Task Force' was established by the NSW EPA to investigate waste offences, illegal dumping, land pollution, and theft of waste metals and other valuable recyclables.
- A task force to investigate and audit 700 resource recovery sites was introduced in Victoria between the Victorian EPA, WorkSafe, Fire Brigade, and other regulators.
- Queensland's 'Operation TORA' continues to investigate unlicensed waste operators and compliance with conditions of waste licences.

NEW DUTY TO REPORT IN VICTORIA

Duty to notify obligations and new general environmental duties will enter into force in Victoria in July 2020, with the state introducing obligations to report pollution and contamination similar to the longstanding requirements in other Australian jurisdictions. The legislation will also introduce a general environmental duty, which imposes a broad obligation on body corporates to take proactive steps to minimise risks of harm caused by the activities of that entity. Companies should ensure they are in position to comply with the new scheme when it enters into force.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

As environmental regulators are increasingly working with safety, road, planning, and fire regulators, businesses can no longer adopt a silo approach to compliance and businesses ensure they are adopting a proactive and holistic attitude towards compliance in all areas of their business.

Joint task forces close the detection gap and increase the chances of a business being detected and penalised for non-compliance.

Businesses operating in Victoria should familiarise themselves with the new reporting obligations, and ensure that their incident response procedures are updated, and training provided to staff and managers on the new obligations.

WASTE REGULATION

WHAT ARE THE EMERGING ISSUES?

- Continued regulator scrutiny
- Commercial pressures for lawful disposal
- Tightening focus on asbestos waste
- Discussion of national approach

The regulation of waste continues to be a national issue, with regulators and the waste industry across Australia struggling to deal with the growing amount of waste in Australia, and the consequences of China's National Sword policy.

Commercial and regulatory challenges continue to face the waste industry. The most significant of which have been policy changes overseas such as China's National Sword policy which significantly limits the type of recyclable material China will accept, as well as similar developments in India, Malaysia, and other countries in the Asia-Pacific.

NEW SOUTH WALES

Waste regulation continues to be one of the New South Wales (**NSW**) Environmental Protection Authority's (**EPA**) regulatory priorities in 2019 following the trend from previous years.

In NSW, the *Protection of the Environment Operations Amendment (Asbestos Waste) Act 2018* amended the Protection of the *Environment Operations Act 1997* (**POEO Act**), to better manage and control asbestos waste in NSW and raises certain asbestos waste offences. The NSW EPA awarded over AUD 500,000 to projects aiming to combat illegal dumping.

NATIONAL INQUIRY

The 2018 Parliamentary Inquiry into the waste and recycling industry in Australia (**the Inquiry**) recommended that the Australian Government assist State and Territory governments to ensure landfill levies in proximate jurisdictions are such that there is no incentive to transport waste for levy avoidance purposes. The Inquiry also recommended the urgent implementation of the National Waste Policy.

QUEENSLAND

Government has introduced a waste levy that will apply to a defined 'waste levy zone' under the *Waste Reduction and Recycling (Waste Levy) Amendment Act 2019* (QLD). The Waste Levy Act was assented on 21 February 2019. However, a uniform implementation across Australia of a National Waste Policy remains outstanding.

Despite this, the NSW EPA remains an active regulator in ensuring waste operators are appropriately licensed and tackling illegal dumping.

Recent prosecutions include:

- *Environment Protection Authority v Dib Hanna Abdallah Hanna* [2018] NSWLEC 80: Mr Dib Hanna was sentenced to three years in prison for unlawfully transporting and dumping asbestos contaminated building waste. He was also ordered to clean up the dumped waste, publish details of the offence, and pay the NSW EPA's legal costs.

  Mr Hanna is the first person to be imprisoned under section 144AB(2) of the POEO Act which establishes that a person may be imprisoned if s/he commits a further waste offence within five years of a previous conviction. Over the past decade, Mr Hanna had previously been issued multiple penalty notices and convicted for multiple waste offences.
- *Environment Protection Authority v Edward Gilder* [2018] NSWLEC 119: The former site manager of Newcastle Waste Recycling Pty Ltd pleaded guilty to illegally stored waste without an environment protection licence. Mr Gilder was prosecuted under executive liability provisions which extend liability to managers for offences committed by the corporation under the POEO Act. Mr Gilder was fined AUD 37,500 and ordered to pay the prosecutor's costs.

Other enforcement initiatives established by regulators include:

- An unannounced multi-agency roadside operation which was initiated in November 2018 to combat the illegal transportation and dumping of waste. NSW's five Regional Illegal Dumping (**RID**) Squads and Programs controlled the operation. 468 transport vehicles were inspected for waste transport and disposal compliance. 22 penalty notices and 16 official cautions were issued for offences such as uncovered loads and allowing waste to outflow onto the road, totalling a sum of AUD 16,447.
- 'Waste Crime Task Force' was established by the NSW EPA to investigate waste offences, illegal dumping, land pollution, and theft of waste metals and other valuable recyclables.
- Queensland's 'Operation TORA' continues to investigate unlicensed waste operators and compliance with conditions of waste licences.

WHAT SHOULD BUSINESSES BE DOING IN 2019?

Businesses operating in the waste industry should remain aware of the changing policy landscape and expect that there will be greater push towards a national framework for waste management. As the EPA has detection and enforcement of waste crimes as a clear priority, operators should be continuing to review their practices and ensure compliance.

Businesses must ensure any waste generated by their activities is transported for disposal, and disposed of, in accordance with the law. Appropriate due diligence ought to be taken to ensure any waste contractors engaged by the business are reputable, as the owner of the waste remains responsible for its lawful disposal.

PART 8

TRADE AND TRANSPORT

Trade and transport

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DRONES

REGULATION OF DRONES

It is estimated there are now more than 50,000 users of recreational drones and well over 1,000 commercial operators in Australia. The rapid development of the industry in recent years has resulted in a period of continual review and amendment of Australia's aviation safety regulations governing the recreational and commercial use of drones.

Government policies that regulate the use of drones include:

- the proposed detailed technical requirements, specifications and standards for the operation of Drones issued by Australia's aviation regulator, Civil Aviation Safety Authority (**CASA**) for consultation and which can be found in the Part 101 (Unmanned aircraft and rockets) Manual of Standards;
- New South Wales (**NSW**) Environmental Protection Authority (**EPA**) 'Guidelines on EPA use of unmanned aircraft' which establishes when the NSW EPA will use drones for surveillance;
- 'Remotely piloted aircraft operating guidelines' released by the NSW Department of Planning and Environment; and
- policies adopted by many local councils regarding drones and their intended use for regulating and monitoring compliance, particularly for land that is difficult to access by officers.

One of the current challenges in Australia when it comes to drones is the lack of uniformity regarding State and Commonwealth privacy and surveillance legislation relevant to drones. This makes compliance difficult from a drone operator perspective and also from a drone detection and mitigation perspective. This has created hurdles in, for instance, the implementation of counter-drone measures, even where such measures are designed to enhance public safety and security.

FORTHCOMING CHANGES TO AVIATION SAFETY REGULATIONS GOVERNING DRONES

2019 will see further significant regulatory chances in this space. Principally, a new mandatory registration and accreditation scheme for drones has been announced by CASA and will commence in late 2019. That scheme will apply to all commercially operated drones regardless of size. This follows a suite of recommendations made in a Senate Inquiry report into the current and future regulatory framework for drones released in 2018. Other key recommendations in that report included the development of a drones-specific airworthiness standard, establishment of a nation-wide enforcement regime, and the creation of a much wider legal framework for drones encompassing other issues such as privacy, cyber security, and third-party damage.

It will be interesting to see whether CASA is also prompted to consider the implementation of stricter controls on drone operations in light of the high-profile disruption events at London's Gatwick and Heathrow Airports in late 2018 and early 2019. Potential changes that have been called for both in Australia and overseas include widening airspace exclusion zones around airports, increasing penalties for illegal use, and identifying a safe and efficient way of bringing drones safely to ground for identification and sanction of the offending operator.

USE OF DRONES FOR REGULATORY OVERSIGHT

Drones and satellite/aerial imagery are a growing method for detection of non-compliance, particularly when monitoring rural and remote areas.

The use of remote surveillance technology in capturing non-compliance has been an effective method of regulation. For example, a South Australian Court recently fined a director AUD 60,000 and his company AUD 37,000 for illegal clearing of 115 hectares of vegetation detected using satellite data.

Government initiatives have also been launched, such as by the Victorian EPA (**VIC EPA**) introducing an Unmanned Aerial Vehicle (**UAV**) Program to capture video footage of illegal dumping and polluting. VIC EPA's UAVs can be fitted with a variety of attachments to aid officers in calculating the volume of waste tyres on a site, using thermal imaging to identify hotspots in landfills, and sample air and water.

FREE TRADE AGREEMENTS

COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**), entered into force on 30 December 2018, for Australia, Canada, Japan, Mexico, New Zealand and Singapore, and on 14 January 2019 for Vietnam. A number of other member countries will join once their domestic ratification processes are completed.

The CPTPP Agreement delivers the market access package that was agreed as part of the Trans Pacific Partnership Agreement (which was signed but failed to enter into force after the United States announced it was withdrawing).

The CPTPP Agreement will remove tariffs on an estimated 95% of goods traded between eleven member countries. This is expected to build on the preferential market access Australia has already achieved through FTAs with Japan, Malaysia, Chile, Singapore, Vietnam, and Brunei. It also opens access to new markets in Canada, Mexico, and Peru.

In the services sector, there will be a greater level of transparency and predictability across services sectors. Financial services companies will be able to provide cross-border insurance and brokerage services for risks relating to maritime shipping and international commercial aviation and freight.

The CPTPP will promote foreign investment in Australia by liberalising the screening threshold for private foreign investments in non-sensitive sectors. The threshold will increase to AUD 1.154 million for member countries with an ongoing ability to screen investments in sensitive sectors.

A number of new bilateral side letters were also signed between Australia and certain member countries that address matters such as e-payment services.

AUSTRALIA-HONG KONG FREE TRADE AGREEMENT

Australia and Hong Kong signed the Australia-Hong Kong Free Trade Agreement (**A-HKFTA**) on 26 March 2019. As a Special Administrative Region of the People's Republic of China, Hong Kong is able to enter into free trade agreements.

Hong Kong is currently Australia's 12th largest trading partner and the 5th largest source of foreign investment into Australia.

The implementation of the A-HKFTA is expected to promote greater market access for Australian exporters of goods and services.

In the services sector, there will be guaranteed access for Australian suppliers of financial and professional services, engineering and construction, transport and logistics and education.

The A-HKFTA will bind tariffs at zero, a significant change from the current WTO rules which legally permit Hong Kong to increase tariff rates on Australia exports. This will create greater certainty for Australian exporters in the future.

The current financial threshold for screening private Hong Kong investments into non-sensitive sectors in Australia will be increased from AUD 261 million to AUD 1.134 million, although Australia will retain the right to screen investments in sensitive sectors and residential land.

INDONESIA-AUSTRALIA COMPREHENSIVE ECONOMIC PARTNERSHIP AGREEMENT

The Indonesia-Australia Comprehensive Economic Partnership Agreement (**IA-CEPA**) was signed on 4 March 2019. Both countries are in the process of passing implementing legislation.

The IA-CEPA builds on the existing commitments made by both countries under the ASEAN-Australia-New Zealand Free Trade Agreement (**AANZFTA**).

Under the IA-CEPA, 99% of Australia's goods exports will enter Indonesia duty-free or with significantly improved preferential arrangements. All of Indonesia's goods exports will enter Australia duty-free.

IA-CEPA will also liberalise services trade and investment between Australia and Indonesia. Indonesia has agreed to make specific commitments in the energy and infrastructure sectors and will allow Australian-owned companies to supply a range of mining-related and energy services. In the construction sector, Australian-owned companies will be able to provide various construction-related services to Indonesia on a cross-border basis. There will also be greater transparency in relation to the application procedures necessary to supply financial services.

The IA-CEPA Investment Chapter includes an Investor-State Dispute Settlement (**ISDS**) provision which will provide investors with both countries with the ability to resolve disputes through arbitration. There will be limited scope for Indonesia to make key investment regulations more restrictive in the future.

HEAVY VEHICLE NATIONAL LAW

AMENDMENTS TO THE HEAVY VEHICLE NATIONAL LAW

From 1 October 2018, amendments to the Heavy Vehicle National Law (**HVNL**) will impose new Chain of Responsibility (**COR**) obligations upon every party in the heavy vehicle transport supply chain

The amendments to the HVNL will mean that parties to the supply chain will have a positive duty to eliminate and minimise risk by doing everything 'reasonably practicable' to ensure that transport-related activities comply with the HVNL. The COR obligations are expected to impact over 165,000 businesses that use heavy vehicles in their supply chain.

NEW COR OBLIGATIONS

The HVNL is currently in place in Queensland, New South Wales, the Australian National Territory, Victoria, Tasmania and South Australia.

The new COR obligations recognise that parties other than drivers of heavy vehicles, may be responsible for action or inaction, or impose demands, that has consequences for safety in the heavy vehicle industry. The changes are designed to recognise that any party in the supply chain in a position to control, influence or encourage particular on-road behaviour is identified, that such persons take positive steps to remove risk and that they will be held accountable for their action or inaction.

The COR imposes a non-transferrable primary duty, which extends legal liability to all parties who have control or influence over the transportation of goods in the heavy vehicle supply chain (within the scope of the existing HVNL) including corporations, employers, prime contractors, vehicle operators, schedulers, consigners, consignees, receivers, loaders and unloaders.

The COR amendments impose a primary duty upon all members of the supply chain to minimise potential risks by doing all that is 'reasonably practicable' to ensure safety. These new amendments closely resemble the national work health and safety laws (*Work Health and Safety Act 2011* (Cth)) and associated regulations (**WHS**).

The COR amendments will also impose a primary duty upon company executive officers to exercise due diligence to ensure that a corporation complies with its duties under the HVNL.

DEFENCES

In defending a claim for breach of the COR, all participants in the supply chain will need to demonstrate the measures that were in place, at the time of the breach, to prevent breaches of the HVNL from occurring. In addition, it will be necessary to provide evidence that a party did all that was 'reasonably practicable' to minimise risks and ensure safety.

In determining whether an entity has ensured safe practices, as far as is 'reasonably practicable', the regulator will consider factors such as the likelihood of the risk occurring; the degree of harm; the entity's knowledge of the risk; ways to remove the risk and whether this is feasible, as well as whether the costs of removing the risk are proportionate.

NEW PENALTIES

The investigative powers of the regulator will be extended and the regulator will have the ability to prosecute companies for both breaches of the HVNL and for a failure to implement practices which would prevent a breach from occurring. The penalties for breach of the new laws will be a maximum fine of AUD 3 million for a company and a maximum fine of AUD 300,000 or five years' imprisonment (or both) for an individual.

Conclusion

In this report we have addressed the 2019 regulatory trends and how businesses should adapt this coming year.

As a firm we are committed to mapping out and understanding risk to help our clients navigate the landscape they face. Resilience management is increasingly at the top of corporate agendas, and with this evolving risk landscape regulatory frameworks are needing to move fast to keep up.

Clyde & Co has an integrated offering covering the full spectrum of operational risk and regulatory services. We are able to offer our clients the right expert on a broad range of activities involved in building organisational resilience, including: risk assessment, compliance frameworks and practical preparation in order to minimise business interruption to regulatory risk and protect their reputation.

If you would like to understand how Clyde & Co can help you in this regard please contact us.

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