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The 2020 Financial Services Human Rights Benchmark Report

A study of the human rights performance of 22 ASX Listed Financial Services Entities



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This report is presented for the purpose of disseminating information and research findings for the benefit of the public. It has been prepared on the basis of evaluation of human rights performance based on publicly available material for the 22 ASX listed entities included in the sample.

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Executive summary

This report presents the findings of a research project that devised a human rights benchmark specifically for financial services and applied that benchmark to evaluate the human rights performance of a sample of 22 ASX-listed financial service entities (FSEs), based on their 2019 financial year disclosures.

There are **three key findings** from our research. These findings are inter-related but seek to identify the likely root causes of financial institutional failures in human rights risk management and to provide a pathway towards better human rights results for our FSEs their customers, clients and employees, and for society at large.

Key finding 1: Financial service entities fail to appreciate how human rights are a key source of non-financial risk

None of our 22 sample FSEs identified human rights as a key source of non-financial risk, even though these rights are implicit within the standard non-financial 'risk trifecta' of operational risk, compliance risk and conduct risk.

FSEs are thus unlikely to allocate the resources necessary to minimise effectively the risks that their activities will have a negative human rights impact. We believe that FSEs may also be overlooking opportunities to have a positive impact on human rights via their routine business activities, which would enhance their overall management of operational, compliance and conduct risks. Having fewer or no adverse human rights impacts would improve the standing of financial services entities in the eyes of their employees, suppliers, customers and broader society. It would also save billions of dollars in customer remediation costs and regulator fines, and we also suggest it could lead to better use of technology spend and the insights available via the data sources generated and used by FSEs.

Key finding 2: This lack of awareness means human rights risk management is opaque and inconsistent within financial services entities.

This failure to identify human rights risk as a key source of non-financial risk means that human rights are not given due attention in the risk governance framework within FSEs. Certainly, many of our sample financial services entities do have human rights policies, and most also engage in corporate philanthropy that seeks to satisfy one or more of the UN's *Sustainable Development Goals*, or some other social goal. But our analysis indicates that none of our sample FSEs allocate a role to the board or to its key committees to consider human rights in the wider sense of the term such as envisaged in the UN's *Guiding Principles on Business and Human Rights*.

We question how well existing FSE human rights policies can function if there is little or no attention given to human rights risk at the highest levels of the FSE. While risk identification and management via 'three lines of defence' can be adequately resourced to undertake this task, the starting point is to expand the understanding within FSEs of just how pervasive human rights risk is within their operations from the top down.

Key finding 3: Delivering better human rights outcomes requires a commitment to change practices.

Our data reflects a lag in FSEs' understanding of the relevance of human rights to their core business and the pressing nature of demands that they pay greater heed to the impacts (both positive and negative) that they have on the human rights of all those they interact with.

The financial sector has been dogged by human rights-related incidents and issues in recent times: poor treatment of retail customers, risk management and compliance systems blind to wider social considerations, investments without due consideration to human rights impacts, sexual harassment and wage gaps in the workplace, and limited sense of how public policy advocacy by FSEs is at odds with their stated business policy positions.

The finance sector is clearly not immune to such problems. Similar problems have been apparent in other sectors (such as apparel and footwear, extractive and pharmaceutical sectors) for much longer. These histories provide FSEs both with chastening warnings and with opportunities to learn lessons. And the most important lesson of all is that businesses (in this case FSEs) have a choice. Either they can do little or nothing and retain the current human rights-lite status quo, or they change their governance, management, and policy positions to reflect the new normal of comprehensively engaging with the human rights consequences of their actions.

Part I: Lessons learnt

Post-Hayne world of financial services

Writing in December 2020, it's hard to remember just where financial services was in 2018/2019. *The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry* dominated the media in 2018 and the release of its final Report on 4 February 2019 presented commitments to take on board the findings and recommendations of Commissioner Hayne. Most of the Royal Commission's findings relate to conduct towards retail customers and clients of financial services.

Our submission to the Royal Commission's Interim Report¹ indicated that human rights risk is evident in financial services misconduct involving retail customers. Yet financial services is still behind in its thinking of just how and to what extent its ordinary business activities impact human rights.

In his recommendations that financial services entities better manage the regulatory, compliance and conduct risks they face, Commissioner Hayne exhorted FSEs to reflect on the critical role that culture and governance play in promoting such improvement.² Subsequent spectacular failures in this respect – such as Westpac's breach of AUSTRAC reporting obligations (and subsequent heavy, court-backed penalties) – bear out the point. And yet within Westpac's 23 million breaches in this case lies a relatively small number of transactions that were linked to child sexual exploitation in the Philippines. It was these transactions that captured media attention and public outrage that a leading Australian bank should be implicated in such practices.

Inadvertent though such involvement may be, cases like this are powerful illustrations of how serious human rights impacts can often be hidden or disguised in unusual places, including in anti-money laundering laws. It is incumbent on FSEs, like all businesses, not only to be aware of such eventualities, but to take care to identify, prevent and remedy them, as appropriate.

The challenge for financial services entities, therefore, is to appreciate that human rights goes beyond the obvious and potentially underpins every transaction, notwithstanding that the counterparty to a transaction may be a corporation or the relevant law a corporations or finance law.

The Benchmark in brief³

The Financial Services Human Rights Benchmark (FSHRB) is designed to measure the human rights performance of financial service entities (FSEs) across their **five domains** of business operations where FSEs' activities impact on human rights – namely, retail; commercial lending, investment and services (CLIS); employees; suppliers and supply chain; and society.

The FSEs are measured against **six human rights categories** – namely, privacy and information; anti-discrimination; economic security; health and safety; voice and participation; and right to remedy.⁴

The measurement of human rights performance is obtained by using **five operational factors** – namely, governance; policy positions; due diligence; outcomes; and impact.⁵ A comprehensive set of **specific indicators** were used in assessing FSEs' human rights performance across these five factors.

Our scale of measurement is a simple traffic lights system. Where green denotes broad compliance and/or promotion of human rights; red denotes broad non-compliance and/or lack of human rights promotion; and amber denotes somewhere in between. As such, across all 22 FSEs in our sample for 2020, the aggregate scores in respect of operational factors were either a solid colour (red) or more usually of blend of all three colours. In respect of domains, however, red predominates, with some amber and no green.⁶

¹ Kym Sheehan and David Kinley, [Community Expectations: Putting People Before Profit Means Taking Human Rights Seriously](#), (October 2018).

² The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry, [Final Report](#), Volume 1 (February 2019), 333.

³ For a fuller explanation of the Benchmark see our Methodology Report that accompanies this Annual Report, available on our [FSHRB website](#).

⁴ See Figure 5 below in Part II and the accompanying text for further details on these human rights categories.

⁵ For this first year of the benchmark, we did not seek to measure the 'impact' factor as this is measured over a longer time frame. See Figure 6 below and accompanying text.

⁶ See Figures 6 and 7 below, respectively.

Our 2020 FSE sample

Our focus in this Benchmark report is on a sample of Australia's 22 ASX listed financial services entities, identified below in Figure 1. The decision to focus on listed FSEs for our inaugural report reflects both the extent and the depth of disclosure provided by listed financial services entities. This is not to suggest the disclosure of these entities is uniformly of a high standard when it comes to human rights information: it isn't. The absence of mandatory disclosures around non-financial risk in the *Corporations Act*,⁷ Regulations and accounting standards means that any disclosures we found were voluntary. Aside from any voluntary standards the FSEs adopted (such as membership of the UN Principles of Responsible Investment, or the Equator Principles for project finance), it reflects the influence of institutional investors in demanding a broader range of disclosures from their investee companies.

AMP Ltd (AMP)	Australia New Zealand Banking Group Ltd (ANZ)
AfterpayTouch Group Ltd (APT)	Bendigo and Adelaide Bank Ltd (BEN)
Bank of Queensland Ltd (BOQ)	Commonwealth Bank of Australia Ltd (CBA)
Challenger Financial Group Ltd (CGF)	HUB24 Ltd (HUB)
Insurance Australia Group Ltd (IAG)	IOOF Ltd (IFL)
Magellan Financial Group Ltd (MFG)	Macquarie Group Ltd (MQG)
National Australia Bank Ltd (NAB)	Netwealth Group Ltd (NWL)
Pendal Group Ltd (PDL)	Perpetual Limited (PPT)
Pinnacle Investment Management Group (PNI)	Platinum Asset Management Ltd (PTM)
QBE Insurance Ltd (QBE)	Steadfast Group Ltd (SDF)
Suncorp Group Ltd (SUN)	Westpac Banking Corporation Ltd (WBC)

Figure 1: FSE sample Year 1 benchmark report

⁷ *Corporations Act 2001* (Cth), chapter 2M

Our sample captures a broad range of Australian financial services, with the exception of stand-alone superannuation entities.



Figure 2: FSE sample by sub-industries

Our sample FSEs vary in size as measured by revenue and employees, as indicated below in Figure 3.

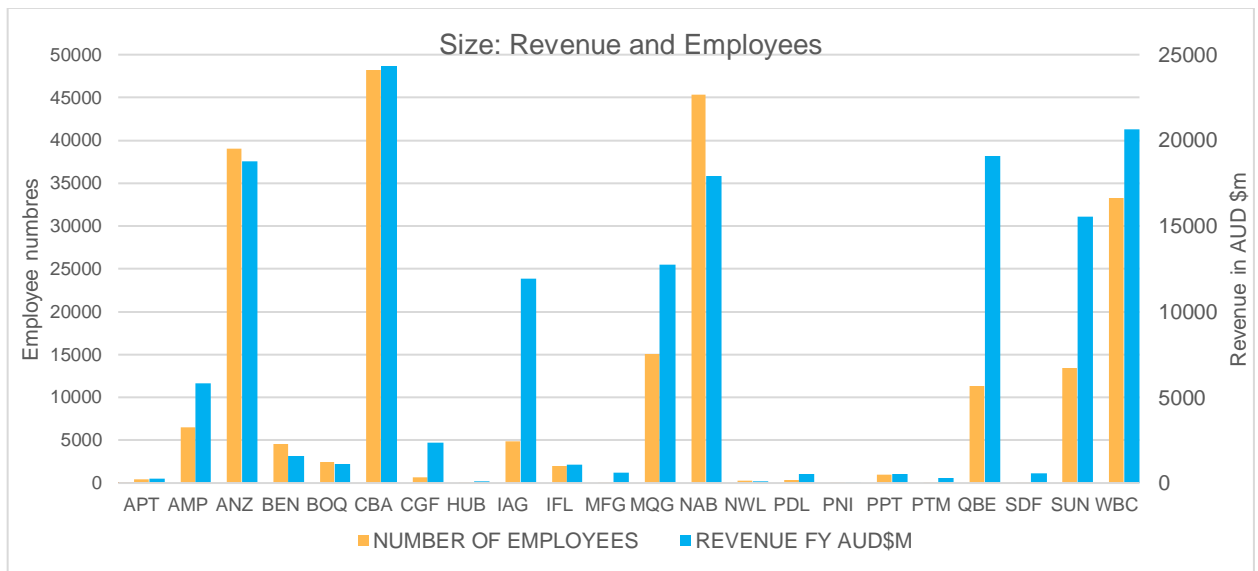


Figure 3: Size of FY19 sample FSEs by revenue and by employees

Human rights present key non-financial risks in financial services

Our Benchmark focuses on human rights impacts in five key domains of financial services operations

1. Retail
2. Commercial investment and financial services (CLIS)
3. Employees
4. Supply chain and suppliers
5. Society.

Our analytical framework indicates that human rights risks exist in all five domains, yet none of our sample FSEs identified human rights risk as material to their business, let alone adopted a comprehensive statement of all their particular human rights risks.

Having found that none of our sample FSEs identified human rights as a material risk, we examined each FSE's annual report, corporate governance statement and any sustainability report (or equivalent) to understand whether there was a pattern to the types of risk that they identified as pertinent non-financial risks in their risk disclosures.⁸ The fact that FSEs routinely label certain future possibilities as 'risks' indicates that the decision not to use that label in respect of human rights matters but rather to tag them as 'issues', is a deliberate and telling choice.

Aside from strategic risk, the most commonly identified material non-financial risks largely reflect the non-financial 'risk trifecta' of non-financial risk found in the *Prudential Inquiry into the Commonwealth Bank of Australia* and endorsed by APRA in its subsequent self-assessments, ASIC and the Hayne Royal Commission.⁹

<u>operational risk</u>	the risk of losses resulting from inadequate or failed internal processes, people and systems or from external events and includes legal risk, but excludes strategic and reputational risk ¹⁰
<u>compliance risk</u>	the risk of legal or regulatory sanctions, material financial loss, or loss to reputation a bank may suffer as a result of its failure to comply with laws, regulations, rules, related self-regulatory organisation standards and codes of conduct applicable to its banking activities ¹¹
<u>conduct risk</u>	the risk of inappropriate, unethical or unlawful behaviour on the part of an organisation's management or employees ¹²

Figure 4: The non-financial risk trifecta

Each category within the non-financial risk trifecta would appear to implicitly require consideration of human rights risk. Sexual harassment, breach of financial services laws requiring extensive customer remediation, misuse of customer information, breaches of privacy, and wage underpayment could each fit within two, if not all three of these risk categories. As defined above, none of the three risk categories specifically identify risk topics (such as human rights risk, climate change risk, technology risk). This raises the question of how risks are identified within our sample FSEs so that they can be adequately managed by the entity.

⁸ We classified non-financial risks and issues into four topics: Administrative/business, social, environmental, and other. Under these four topics we then divided them into categories and sub-categories in an attempt to understand the nuances in the disclosures. There are some human rights concerns evident in the sub-categories, notably around employees and also around data and information security and privacy. As we demonstrated in our submission to the Hayne Royal Commission, there are aspects of financial services law that reflect human rights concerns, although these laws were not framed with these rights in front of mind.

⁹ Hayne RC, [Final Report](#), Volume 1, 333.

¹⁰ Basel Committee on Banking Supervision, [Principles for the Sound Management of Operational Risk](#), June 2011, 3.

¹¹ Basel Committee on Banking Supervision, [Compliance and the Compliance Function in Banks](#), April 2005, 7.

¹² Australian Securities and Investments Commission, [Market Supervision Update Issue 57 – Conduct Risk](#), March 2015.

Non-financial risk and the ‘three lines of defence’

Our sample FSEs typically emphasise their adoption of the three lines of defence model (3LOD) of risk management.¹³ This standard corporate model allocates responsibilities for risk from frontline management/business units as ‘risk owners’ (line 1), through risk management and compliance functions (line 2), to internal audit function (line 3), using a policy framework and risk identification and ranking methodologies. As noted, for example, in AMP’s 2019 Corporate Governance Statement, “The ‘three lines of defence’ approach is designed to provide assurance to management and the board that risks are identified, managed and reported effectively.” APRA has identified the 3LOD framework as providing an effective framework for risk *management*¹⁴ Yet the 3LOD framework appears to operate alongside a separate internal risk governance framework that includes the Board.¹⁵

This somewhat dislocated approach - risk identification via 3LOD at first line, risk accountability via the separate risk governance process - might help explain why closer attention isn’t being paid to human rights risk, with appropriate risk identification, adequate resourcing and accountability.

Risk identification and risk culture

Risk identification in FSEs has to also address the broader role of risk culture. Risk culture, according to APRA,

‘refers to the norms of behaviour for individuals and groups that shape the ability to identify, understand, openly discuss, escalate and act on an entity’s current and future challenges and risks. Risk culture is not separate to organisational culture but reflects the influence of organisational culture on how risks are managed.’¹⁶

How risk culture is defined within FSEs has implications for its management of human rights risk. APRA’s research indicates risk culture work is undertaken by the risk function,¹⁷ the second line of defence, with the Board setting the FSE’s risk appetite and also forming a view of their FSE’s risk culture.¹⁸ Its 2019 review of a sample of FSEs’ self-assessments found that FSEs ‘either struggled to articulate their assessment of culture or provided little evidence to support their assessment.’¹⁹

Noting the importance the Hayne Royal Commission attached to so-called ‘norms of conduct’,²⁰ we argue that merely achieving adherence to the law by demonstrating these norms (which simply restate the existing laws) won’t be sufficient to achieve improved human rights performance by FSEs. And while it is clear that these norms of conduct dovetail nicely with the risk trifecta of operational, compliance and conduct risk, the norms are less helpful when considering risk topics as diffuse as human rights risk or climate change risk. Recognising and understanding the potential human rights implications of providing negligent financial advice to a retail customer or of offering financial services to corporate clients or endorsing investments (whether proprietary or commercial) without due diligence, requires the adoption of new perspectives that are both broad and attentive to detail. This is the stuff of Board directors, not merely the rehashing of operational risk management profiles.

Yet FSEs are not without guidance to influence non-financial risk. Organisational culture (and thus risk culture) reflects organisational values. ASX Corporate Governance Council Recommendation 3.1, for example, instructs listed entities to articulate and disclose their corporate values in so far as they instill and continually reinforce a culture across the organisation of acting lawfully, ethically and responsibly. Improving FSE’s performance on human rights will require employees at all levels, plus the Board of Directors, to understand

¹³ Risk management frameworks can be defined as ‘the systems, structures, policies, processes and people within the Group that identify, measure, evaluate, mitigate, monitor and report on internal and external sources of material risk.’ National Australia Bank, [NAB 2019 Corporate Governance Statement](#), 15 November 2019, 13.

¹⁴ Australian Prudential Regulatory Authority, [Prudential Practice Guide CPG 220 Risk Management](#), April 2018, [4].

¹⁵ Risk governance can be defined as ‘the formal structure used to support risk-based decision making and oversee risk management across the Group’s operations. This consists of Board and management committees, delegations of authority for decision making, management structures and related reporting.’ NAB 2019, above n 13.

¹⁶ APRA, [Transforming governance, culture, remuneration and accountability: APRA’s approach](#), Information Paper (2019), 8.

¹⁷ APRA 2014, 16.

¹⁸ APRA 2019, 8.

¹⁹ APRA 2019, 10.

²⁰ The six norms are: obey the law, do not mislead or deceive; act fairly; provide services that are fit for purpose; deliver services with reasonable care and skill; and act in the best interests of the other when acting for another: Royal Commission [Final Report](#), February 2019, 375.

what lawfully, ethically and responsibly mean, especially as acting ethically and responsibly take culture beyond mere compliance with the law. Such guidance provides a framework within which good human rights performance can be achieved.

The FSHRB and risk culture

Our FSHRB model demonstrates that human rights risks operate in different ways across an FSE's operations. Thus, a top-down approach to culture that seeks to ensure good human rights performance with a 'one size fits all' approach or a generic statement on human rights is unlikely to be effective. Understanding the human rights risk in a retail domain requires a very different lens than human rights risk within commercial lending, which differs again from investment, and both are different from commercial services. The human rights risks for employees, or more particularly, managing the human rights risks for employees, is more challenging in FSEs with large workforces. In other words, just as acting lawfully raises different specifics (legal obligations to retail clients, legal obligations to commercial clients; legal obligations to employees), so acting ethically and responsibly with an awareness of human rights risks and impacts raises different issues and opportunities within each of our five domains.

A particular challenge within the larger FSEs is the current approach of management by committee, which can lead to the disaggregation of risk into separate sub-committees. Take for example ANZ: its 2019 Annual Report on page 45 identifies 16 committees as the 'key' management committees involved in its 3LOD framework.²¹ Westpac too has identified a similarly complex array of 23 committees involved in its group-wide risk governance structure, with committees established by risk classes (credit, operational, funding liquidity and capital, market and compliance) supplemented by a set of divisional risk and compliance committees.²² And NAB's self-assessment places its First Line Risk Management Committees alongside Group-wide committees tasked with risk management, including its value chain risk management committees.²³

APRA has previously commented in its reviews of significant FSE's prudential frameworks that non-financial risk management requires improvement, noting this could be achieved by closing resource gaps, clarifying roles and responsibilities for risk, and ensuring sufficient monitoring and oversight.²⁴ **Our data shows that one simple way to ensure that human rights risk isn't being overlooked in the risk identification process in the first line of defence is to provide training on human rights in financial services to front line staff and lower levels of management.** Specific case studies within the financial services sector would assist in this activity to help staff appreciate how their usual business activities can have negative and positive impacts on the human rights of direct clients and indirectly of people who are stakeholders of those clients.

Governance of human rights in FSEs

'Governance' is the first of three factors in our model that address risk management in FSEs (the other two being 'Policy Positions' and 'Due Diligence'). Governance is the bedrock for risk management as it ensures that there is accountability and responsibility at the board level for risk. This cannot be just 'risk' in a general sense but specific risks as they pertain to the FSE's operations and actions. In other words, risk management requires going beyond risk categories of operational, conduct and compliance risk to specific risk topics or labels.

We know that accountability and responsibility are not readily understood phenomena within some FSEs, as illustrated in the following quotes from two of our sample FSEs' APRA self-assessment reports:

'The concept of *accountability* (answerability of an individual for behaviour and outcomes within a designated zone of influence such as a business unit or process), as distinct from *responsibility* (the obligation of an individual to perform a designated task with requisite competence and behaviours), is not elevated among Westpac's five core values or defined in a consistent way for employees'²⁵

'Although NAB has formally articulated many elements of accountability for employees, and particularly senior leaders, challenges in assigning and taking accountability persist... A key challenge in assigning accountability to a single owner relates to the design of NAB's organisational

²¹ The actual number of committees will be higher as the figure notes there are 'various divisional specific management committees'.

²² Westpac Banking Corporation, [Governance, Accountability and Culture Self-assessment](#), 28 November 2018, 39 (figure 5B).

²³ National Australia Bank Limited, [NAB Self-assessment on Governance, Accountability and Culture](#), November 2018, 19.

²⁴ Australia Prudential Regulatory Authority, [Information Paper Self-assessment of Governance, Accountability and Culture](#), 22 May 2019, 12.

²⁵ Westpac, [Governance, Accountability and Culture Self-Assessment](#), 28 November 2018, 70.

structure, in which end-to-end processes for delivery products and services to customers span several divisions.²⁶

In fact, not one of our FSE sample members allocated responsibility for 'human rights' to the Board. This means that the Board does not discuss human rights as part of its routine annual cycle of meetings. It suggests that there is no human rights awareness at the Board level and no sense of how human rights pervades all of the FSE's activities either directly or indirectly through such vehicles as the UN Sustainable Development Goals.²⁷ Given the important role of the directors in questioning and challenging management, its role in risk governance, as well as its role in signalling what's important in the FSE's culture by 'setting the tone from the top', we must infer from the absence of any specific accountability for human rights at board level that these discussions do not occur unless there is a specific event.²⁸

That said, we also looked at each of our six human rights categories (detailed below) separately to see if one or more of them was considered at the Board level. We did find some human rights-related issues considered by Remuneration Committees in so far as these relate to employees, and to a Nomination Committee in so far as gender diversity representation on the board. We also found aspects of privacy discussed by IT/Technology Committees (where they exist at the Board level). Yet, it is notable that none of the FSE boards or committees had a holistic view of human rights across the full breadth of the FSE's business activities.

This absence of board accountability and responsibility has significant implications for human rights **and is the principal reason why our traffic light system scores no green results in any of the five domains where our FSEs operate.** While data shows that our sampled FSEs have a mixed record (ie red, amber and green) on policy positions across our six human rights categories, with stronger positions for employees and, for some, supply chain, few FSEs related human rights to their retail clients. A lack of public disclosure is another issue reflected in the traffic light score: policy in the Commercial lending, investment and services (CLIS) domain is largely withheld from public disclosure. Suppliers and supply chains are receiving attention at some of the larger FSEs, but this attention isn't widespread across the sample.²⁹ We explore this in more detail in the next section.

Our focus has been on the areas where policy positions exist. How, we ask, does the Board conduct its performance and conformance roles if its remit doesn't specifically require consideration of human rights issues? **There seems some cognitive dissonance between these policy positions and the absence of board level accountability.** The policies 'hang' in the FSE's risk governance and management frameworks, without anchor points.

Another notable absence in the governance sphere was oversight of a FSE's public policy advocacy. In our current context this means no Board-level recognition of any human rights implications of a FSE's advocacy on public policy matters. We note that typically our FSEs do have particular policies dealing with ASX announcements, thereby providing the Board Chair a role in that process (albeit one largely managed by executive management). But unlike an ASX announcement that could be heralding market sensitive news and thus arises in a time-pressured situation, public policy advocacy usually operates on a more measured timeline. From our data we observed that none of our FSEs actually gave the board or any of its committees an oversight role for public policy advocacy as a routine matter. The responses of some of our sample FSEs to the Hayne Royal Commission, including the creation of board sub-committees to address the extra workload, does however indicate that it is possible for such broad-based Board governance to occur.

Public policy advocacy is an important litmus test of an FSE's real commitment to human rights. We invite Boards and senior management to rethink their perspective on the relevance of human rights to all aspects of their FSE's operations. The impacts are real, pervasive and, when FSEs fail to account adequately for the risk of adverse impacts, costly.

²⁶ NAB, [NAB Self-assessment on Governance, Accountability and Culture](#), November 2018, 43.

²⁷ Refer to our [Methodology Report](#) at page 6 for more information on the close connections between human rights and the SDGs, available on our [FSHRB website](#).

²⁸ For example, in response to the AUSTRAC actions against Westpac, the Board Financial Crime Committee was established on 27 November 2019 and dissolved on 1 June 2020 (with responsibilities then assumed by the Board Legal, Regulatory and Compliance Committee): Westpac 2019 Annual Report, 69.

²⁹ We note the [Modern Slavery Act 2018](#) (Cth) disclosure obligations were not applicable to our sample FSEs in 2019. Larger FSEs disclosing supply chain information were typically doing so to comply with the UK Modern Slavery Act (2015) requirements.

Delivering better human rights outcomes requires a commitment to change practices

The fourth of our five factors, OUTCOMES, provides a reality check for the human rights risk management approach of the sample FSEs as determined by the factors of governance, policy positions and due diligence. Outcomes in our Benchmark are domain specific and are a mixture of FSE sourced and third-party information sources. In keeping with our methodology, all of our data sources are publicly disclosed information.

We had the strongest visibility of outcomes indicators in the retail, employee and society domains where we make extensive use of third-party sources (such as the results of court cases for retail, CLIS, employee and supply chain domains), or third-party repositories (such as AFCA's³⁰ data cube for retail, WGEA's³¹ website for employees, and various consultation platforms for society).

We have come to terms with the fact that some areas of interest to us are shaped by a culture of confidentiality (such as settlements with employees and customers when resolved internally). We can never know the full extent of these matters. Yet we know from media stories that emerge of issues regarding the treatment of women as employees of some of our sample FSEs – cases that suggest anti-discrimination policies aren't achieving their aim: respectful treatment of all in the workplace. We know from AFCA data that internal mechanisms for resolving customer complaints do not always result in a resolution, but that many cases are finding their way to AFCA. That a larger number of cases are being resolved by AFCA in favour of the customer suggests a resolution in favour of the customer was possible when the issue was raised with the FSE's internal mechanisms.

We had the least visibility for the CLIS domain. Most of our sample FSEs do not receive attention from international human rights NGOs interested in financial services such as BankTrack, due to their relatively small size, though there is more local NGO interest in climate change financing (such as MarketForces). Other sources of information that are frequently referenced in this domain, such as details of project and other financing, are collated on proprietary databases.

FSE-sourced disclosure in the area of people centric measures (such as employee numbers, broader diversity data, data on employee misconduct and dismissals) tends to be in response to investor-lead initiatives, rather than legislative requirements. This means that our sample FSEs are largely free to pick and choose what they disclose in relation to some of their key people metrics and other sustainability measures around climate change. With IFRS³² currently consulting on sustainability reporting,³³ an international standard may emerge within that framework. However, it would need to be adopted locally by the AASB³⁴ and likely need further support via amendments to the reporting provisions in chapter 2M.3 of the *Corporations Act 2001* (Cth) and the *Corporations Regulations 2001* (Cth). For now and the foreseeable future, the existing approach to disclosure will remain.

Unlike other benchmarks that explicitly reward disclosure as part of their scoring mechanism, our traffic lights approach does not do so. Where there is an absence of information to make an assessment, we refrain from making one. However, we note the absence of disclosure and, in light of the noted absence of robust human rights governance, policy positions and due diligence, offer FSE-specific comments on this issue. FSEs and stakeholders reviewing the traffic light outcome, therefore, should consider the equivalent outcomes of peers within the industry.

Let us be clear: the evidence from outcomes does not just convey a litany of failings, but also a narrative of missed opportunities. We did not explicitly consider corporate philanthropy activities in our outcomes evidence, nor in any part of our model. While all of our FSEs had some form of philanthropic activities, philanthropy is not a 'human rights offset scheme'. The opportunities we speak of are those arising in the ordinary course of the FSE's business activities.

One of the information sources we considered for the society domain was the 2018 consultation on 'The Voice' mechanism in federal parliament.³⁵ However, none of our sample FSEs, nor their industry associations,

³⁰ Australian Financial Complaints Authority.

³¹ Workplace Gender Equity Agency.

³² International Financial Reporting Standards.

³³ IFRS Foundation, [Consultation Paper on Sustainability Reporting](#), September 2020.

³⁴ Australian Accounting Standards Board.

³⁵ Joint Select Committee on Constitutional Recognition Relating to Aboriginal and Torres Strait Islander Peoples. We considered two of the terms of reference: 1(b) self-determination for indigenous peoples in Australia, and 1(c) options for constitutional change. The [Final](#)

made a submission to that inquiry. That said, of our 22 sample FSEs, 10 FSEs had a Reconciliation Action Plan (RAP) either at the group level or else at a subsidiary level. We reviewed those statements to understand how the FSE defined 'reconciliation'. There are a variety of definitions, but we note the following from ANZ and QBE as examples

'Our vision for reconciliation is an Australia that stands for equality and embraces the unity between Aboriginal and Torres Strait Islander people and non-indigenous Australians.'³⁶

'Our vision for reconciliation is for Australia's First Peoples to be valued, accepted and to experience equality in our society.'³⁷

The types of actions that are adopted within these RAPs cover a broad range of activities. A number are focused on financial literacy, access and independence; employment opportunities via workforce participation schemes; and creating supplier opportunities for ATSI businesses. These are all things that create relationships with the FSE. There are also activities that focus on building relationships externally with ATSI organisations, to raise the FSEs own cultural awareness and to demonstrate respect by various cultural protocols. However, none appear to consider the opportunity to advocate more broadly for indigenous issues. It's likely that the FSEs with RAPs are aware of the *Uluru Statement from the Heart*, and yet they have failed to extend their understanding of what they could do to aid reconciliation by offering public support for the implementation of that statement.

2021 and beyond: The COVID-19 impact on financial services

COVID-19 provided a shock to our economic systems, including financial services. The sector responded quickly to the obvious threat of widespread job losses and steep income falls by offering temporary deferral of loan repayments. The Reserve Bank of Australia also sought to bolster credit supply by tweaking its monetary policy and reducing the cash rate to historic lows. And the federal government stepped in with a raft of temporary law reform measures in the form of Job Keeper, the Coronavirus SME Loan Guarantee Scheme, as well as reforms to corporate insolvency laws to stave off a wave of insolvencies.

So, the finance sector can adapt quickly when needs arise, even when those needs are driven by factors far beyond finance and their effects are social and political as much as economic. Yet this has not always been the case. Pleas of hardship made to FSEs prior to COVID-19, for example, were typically handled painstakingly slowly despite the circumstances of customers and clients being similar (or often worse) to those many have faced during COVID-19.

Like many sectors before it, the finance sector is on a steep learning curve understanding and engaging with the human rights implications of its business and what roles and responsibilities FSEs have in promoting and protecting the human rights of all those they do business with or otherwise effect. This much our Benchmark clearly shows. But while there is much room for improvement, our data and the salutary experience of COVID-19's impact on finance and society at large, gives us some hope that FSEs are at least capable of adapting to broader human rights demands. Where the real challenge lies is in changing mindsets in FSEs such that human rights are recognised as material not marginal to their core business interests.

[Report](#) for this committee was released on 29 November 2018, within our reference period from 1 October 2018 to 30 September 2019.

³⁶ Australia New Zealand Banking Corporation, [ANZ's Stretch Reconciliation Action Plan 2016-2019](#), 3.

³⁷ QBE Insurance, [Innovate Reconciliation Action Plan June 2018-June 2020](#), 3.

Part II: Detailed performance analysis

Our detailed analyses of the human rights performance of our sample of 22 FSEs reported below identifies performance trends across our five factors, as well as trends in performance across each of the five domains of FSE's business operations.

What is especially striking about these performance trends is that while there is evidence of some human rights awareness in terms of our FSEs' policy positions, due diligence and outcomes (represented as green and amber in Figure 6 below), this awareness is not reflected in FSEs' governance arrangements, nor is it routinely reflected in practice as concrete and positive outcomes. As a result, we have allocated mostly red, with some amber, across all five domains of our sample FSEs operations, reflected in Figure 7 below.

To understand our detailed analyses of performance trends, it is important to appreciate how we approach 'human rights'.

Human rights categories

The six human rights categories used in the benchmark are, for the most part, composites of specific individual human rights found in both international human rights laws and relevant Australian laws. They have been chosen because they are the most relevant to the core business operations of financial service entities, and they have been categorised in a way that makes them intelligible to non-human rights specialists in and around the finance sector.³⁸

Privacy and information	Privacy and protection against misuse or abuse of personal information protection against FSE providing misleading information or withholding information that materially impairs a person's informed "consent" regarding contractual relations with FSEs.
Anti-discrimination	No discrimination on illegitimate grounds such as gender, race, indigeneity, or disability.
Economic security	"Quality" of goods and services necessary for the enjoyment of basic economic, social and cultural rights (including the "continuous improvement of living conditions" such as housing, health care and education) is "not sacrificed for the sake of increasing profits." Also covers fair remuneration both within FSEs and their suppliers, contractors and clients.
Health and safety	Rights to workplace health and safety as pertaining in the FSEs themselves, their suppliers, contractors and clients (re: commercial lending), and as pursued (or not) by FSEs in their broader societal interactions.
Voice and participation	Right to freely express views relevant to functions of FSE or the impact of their actions, including the right to association and participation in decisions directly affecting their interests – especially <i>employees</i> (in FSEs, their suppliers, contractors and clients), <i>communities</i> (including indigenous), and, in certain circumstances, <i>broader societal interactions</i> (eg regarding relevant policy positions).
Right to remedy	Right to appropriate means of redress or "effective remedy" when human rights standards are violated or infringed.

Figure 5 The Benchmark's six human rights categories

Factor performance trends

We noted earlier in part I of this report our findings about the governance of human rights within our sample FSEs (pp.8-9 above). The problems this creates are evidenced in the other factors in our model: including

³⁸ A fuller description of these categories and the sources from which they are drawn can be found in our Methodology Report that accompanies this Annual Report. The Methodology Report is available on our [FSHRB website](#).

Outcomes, which we have also already discussed (pp.10-11 above). What remains, therefore, is for us to explain our finding regarding Policy Positions and Due Diligence.

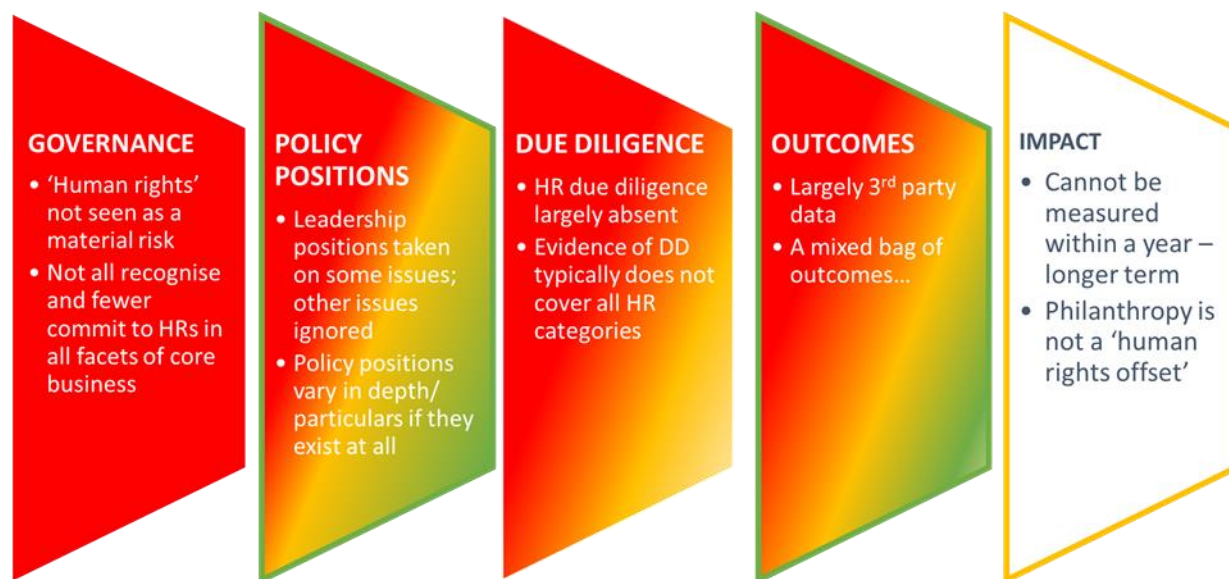


Figure 6:Trends by factor 2019 FSE sample

Policy positions

Our second factor of Policy Positions works together with Governance and Due Diligence to provide a basis for identification and management of human rights risks with the FSE. Policy governance is a very familiar practice within FSEs and so public disclosure of these policies is a way for external stakeholders to verify the FSE’s position on human rights issues. It sets expectations as to the level of the FSE’s awareness of human rights and what actions it might reasonably be expected to take in line with these stated policies.

We framed our indicators to delve into the details of each of the six human rights categories as they were relevant to each domain. Our starting position was to look for a domain specific policy and, where that failed to yield a result, step back to consider firm wide policies.

In some instances there were no publicly disclosed policy positions. For example, we observed that none of our FSEs addressed the risks created by its public policy advocacy on any of our human rights categories. There were policies on continuous disclosure as recommended by the ASX Corporate Governance Council’s Principles and Recommendations,³⁹ but this policy isn’t aimed at public policy advocacy.

In other instances, where a policy was disclosed, it may have considered only one aspect of the human rights category. One example of such a policy is a privacy policy that speaks to retail customers but doesn’t deal with the information aspect of this category: ‘protection against FSE providing misleading information or withholding information that materially impairs a person’s informed “consent” regarding contractual relations with FSEs.’

We found evidence that FSEs have narrow views of human rights, being more ready to adopt a position when it is largely reflecting legal obligations around a human rights issue (for example, anti-discrimination for employees, privacy for retail customers) or, given our sample are listed entities, positions by investor groups (for example, climate change), than to adopt a policy that would extend those human rights fields into other areas (for example, considering how anti-discrimination would operate in the CLIS domain).

We acknowledge our methodology is to rely only upon publicly disclosed information that we could access via the FSE’s own websites. We are aware that other benchmarks use questionnaires to elicit information but, after consideration, we opted not to go down this route. As such, our methodology does open us to the possibility of criticism from FSEs (and others) who might say they have these policies. But our response in these instances is straightforward: make them publicly available so that all stakeholders can evaluate what you are doing, or not doing, for human rights.

³⁹ ASX Corporate Governance Council, [Corporate Governance Principles and Recommendations, 4th edition, 2019](#), recommendation 5.1.

Addressing the policy position gaps cannot occur in isolation from considering governance and due diligence, these being the three essential components of strong human rights risk management. Just seeking to plug policy deficiencies without firstly addressing the human rights governance shortcomings we identified earlier in this report won't be sufficient to implement meaningful change.

Due diligence

Human rights due diligence is a key process within the UN's *Guiding Principles on Business and Human Rights*. Guiding Principle (GP) 15 holds that such a process must identify, prevent, mitigate and account for how businesses address their impacts on human rights. To which GP 17 adds that due diligence includes "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." These stipulations apply to financial services entities no more or less than they do to other businesses and should be seen, as the UN has put it, as "an opportunity" for all financial institutions "to be a force for good [in] implementing their corporate responsibility to respect human rights."⁴⁰

More generally, due diligence is a process that forms the basis of risk management. FSEs routinely deploy due diligence in their assessments of risk around client borrowing from retail clients through to multi-billion dollar finance facilities, investment returns, insurance risk, key suppliers, hiring employees, undertaking acquisitions or divestments. So due diligence is a concept that our sample FSEs understand well. It's a core process within financial services.

It is, therefore, particularly disappointing to find little evidence of effective due diligence processes in relation to our six human rights categories across the five domains. While this might reflect an absence of public disclosure (but not of processes), the failure to recognise human rights risks as material and thus worthy of board governance, is a significant omission. The fact that there exists good transparency in our sample of ASX listed FSEs on other issues (such as climate change) makes the apparent absence of policy positions across many human rights categories within a domain all the more glaring.

Furthermore, our outcomes evidence supports this view. Recall that FY2019 was the year some of our sample FSEs were responding to the Hayne Royal Commission. Customer remediation was an issue for some, yet it is clear that many of the concerns were historic. Take for example the Fees for No Service scandal. With its first report released in October 2016, and updates in May 2017 and December 2017, this isn't a 'new' event that some of our sample FSEs have to manage. In the FY2019 and indeed in the FY2020 annual reports we see that some of these FSEs are still remediating clients for this failure. A central component of the right to remedy in human rights terms is that it is timeliness. The fact that many of our FSEs have managed the volatility of COVID-19 by swiftly providing accommodating services such as financial relief, shows that FSEs are indeed capable of adapting their systems and processes to cope with rapid change. So there really is little excuse for foot-dragging in respect of remedial actions following proven wrong-doing by FSEs.

A small number of our FSE sample are involved in funds management. Their human rights due diligence relates to the companies they invest in but ignores their own ways in which they can have a human rights impact (for example, on their retail clients, via their supply chains or through their public policy advocacy).

⁴⁰ UN Working Group on Business and Human Rights, [Letter to the Thun Group](#), 23 February 2017.

Domain performance trends

The results across the five domains under our traffic light coding system are summarised below in Figure 6. We examine each domain's trends further below.



Figure 7: Trends by domain 2019 FSE sample

Domain 1: Retail

Most of our sample FSEs are entities with a direct retail customer relationship, even if retail is only one business division and they have extensive CLIS operations. We note that a few sample FSEs have no results for this domain. This is because the retail domain is not a part of their business model in the sense that they operate at one level removed from a retail customer by providing services to others who service retail customers. This reflects a supply chain relationship.

The retail domain's overall coding results were **RED** or **AMBER**. One 'tell' for this coding in this year's report is how exposed one sample FSE was to the issues raised by the Hayne Royal Commission in relation to financial advice. For FSEs that regularly encounter problems or attract censure regarding financial advice, their results in outcomes measures will typically be poor, with strong negative impacts evidence in the human rights categories of Right to Remedy and Economic Security.

All of our retail-exposed FSEs perform badly in this domain in relation to Governance, Policy Positions and Due Diligence factors. As noted in our earlier discussion on non-financial risk, none of our FSEs identified 'human rights' as material risks or gave meaningful recognition of the various rights covered by our six human rights categories. Only Privacy receives adequate policy attention and due diligence actions: outcomes evidence of Privacy breaches by some of our sample FSEs indicates this particular breach will be across a number of clients, such as when a breach is referred by the FSE to the OIAC⁴¹ under the notifiable data breach scheme.⁴²

While all of our sample FSEs regard technology risk as a material risk, that recognition did not extend to such risk from a human rights perspective. If FSEs want to move beyond compliance with the law towards a customer-focused culture, reconsidering this risk and the FSE's other material risks from a human rights perspective is a necessary. Doing so in a manner which broadens an understanding of these risk categories is, therefore, an essential first step.

This domain also represents missed opportunities to have a positive human rights impact on two particular categories – namely, economic security and anti-discrimination. These rights categories typically underline FSEs' philanthropy efforts which are, as we made clear above, peripheral, but they should also underline the FSE's commercial relations with its retail customers which are, importantly, core business concerns.

⁴¹ Office of the Australian Information Commissioner.

⁴² Office of the Australian Information Commissioner, [Notifiable Data Breaches Report, July – December 2019](#) (February 2020), 5, notes that Finance Industry (including superannuation) had the second highest level of notifiable data breaches over the July-December 2019 period (77 reports). These could be caused by malicious or criminal attacks (40) but could instead occur via human error (30) or system fault (7).

Domain 2: Commercial lending, investment and services (CLIS)

For some of our sample FSEs with significant CLIS business divisions, this is the domain that reflects their day-to-day business operations. Many of these FSEs have smaller levels of employees than our sample FSEs with a large retail business. Like our other sample FSEs, supply chains are focused on services with only a small component for goods. Thus overall, their human rights footprint is largely determined by their human rights impacts in this domain.

The overall coding results for this domain were **RED** or **AMBER**.

We had the least line of sight into this domain. Yet this is often the domain that receives human rights attention from NGOs or industry associations. Two examples of initiatives aimed at CLIS activities of project finance and institutional investment illustrate this point. Internationally the Equator Principles provide 'a benchmark for determining, assessing and management environmental and social risks in [large infrastructure and industrial] projects.'⁴³ FSEs can decide to adopt the 10 Equator Principles but then also adopt standards of independent monitoring and reporting on the FSE's performance, plus transparency via its own reporting on adoption of these principles. Within our FSE sample, ANZ, CBA, NAB and Westpac are all members.

In the field of institutional investment, the responsible investment movement focuses attention on ESG risks that arise from the investments made by institutional investors. While the UN's Principles of Responsible Investment⁴⁴ are well known and some of our FSE sample are signatories to these principles, it is not the only initiative aimed at influencing the process of institutional investment decision making.

These initiatives emphasise undertaking due diligence prior to committing to the investment or making the loan. Given the familiarity of FSEs with financial due diligence processes generally, it is surely fair to expect that they be extended to encompass all of the activities within the CLIS domain, as well as all five domains where FSEs can impact human rights. Why focus on the small number of projects that fit within the Equator Principles criteria, but give no clear attention to human rights issues in the volumes of other CLIS lending, especially as it is a higher amount of total indebtedness? Once again, there appears to be cognitive dissonance at the highest levels within FSEs when they are comfortable establishing processes for identifying and managing human rights or social risk material to lending or investment decisions, but apparently not comfortable with doing the same for the FSEs own operations.

As we found in all our domains, there is a missed opportunity to have a positive impact on human rights via its CLIS activities. While we see actions within some FSE philanthropy efforts that create business opportunities for indigenous businesses that can supply goods or services to the FSE (relevant to the Supply domain), why not widen that to include loan and insurance products for other indigenous businesses? What about products and services for women-led businesses? While the philanthropic efforts of FSEs aim for impact, there is an opportunity to extend that philosophy to the core matter of business lending.

Domain 3: Employees

As FSEs are a service business, employees are vital to their success. Our sample FSEs vary considerably in the size of their workforces (as measured by full time equivalents, FTE) and thus they also face differing levels of complexity in managing human rights of employees.

Overall the coding results in this domain were a mix of **RED OR AMBER**

In terms of Governance, there was some evidence that our sample FSEs pay attention to non-financial risk within remuneration at the highest levels, courtesy of the requirements for a remuneration committee in the ASX Listing Rules.⁴⁵ Our review of those remits indicates that not all consider remuneration below the CEO's direct reports. Consideration of workplace culture is less prevalent in the remits of the board and committees. For example, while attention is paid to board diversity along gender lines, there is no evidence that diversity is considered more broadly within the FSE. Similarly, Various data items currently reported by some of our sample FSEs present a picture of culture that comprises reporting of code of conduct breaches, whistleblowing data, turnover rates, LTIFR data, parental leave uptake and return to work, as well as employee engagement scores and workforce data. The level of such data tends to reflect the size of the FSE with the larger FSEs in terms of employee numbers being more likely to report these data items.

⁴³ [The Equator Principles](#), 4th edition, July 2020.

⁴⁴ Instituted by the United Nations Environment Programme Finance Initiative (UNEP-FI)

⁴⁵ ASX Listing Rule 12.8 for entities included in the S&P/ASX 300 Index at the beginning of its financial year.

The employees domain was the one domain where we found most of our sample FSEs disclosed a broad suite of policies that could be said to recognise aspects of our six human rights categories, even if the terminology used was that of employment law. Australia's employment law system provides a base for ensuring that most rights of employees are respected in ways that reflect Australia's core international treaty obligations concerning labour. This is supplemented by an anti-discrimination law regime both federal and state that similarly reflects Australia's treaty obligations in that regard.

In terms of human rights policy commitments towards employees, maybe FSEs in our sample perform reasonably well, as evidence by the amber/green shown in policy positions in Figure 6. However, problems exist in fulfilling these commitments to employees. Historic and more recent media coverage highlight the finance sector's poor (or at best, mixed) record of sexual harassment and wage theft/ underpayment at a number of our sample FSEs. Evidence more broadly of this poor performance is reflected in the red/amber coding for the employees domain.

The Male Champions of Change initiative (MCC) promotes the idea that sexual harassment in the workplace be addressed initially by leaders taking responsibility for establishing workplace cultures that prioritise safety, respect and inclusion for all.⁴⁶ The MCC's suggested approach adopts a focus on prevention and early intervention, incident and consequence management, plus transparency in reporting to boards and external stakeholders.⁴⁷ As it notes in a recent report, 'existing gender equality and workplace health and safety practices provide an excellent model to adapt, integrate and amplify.'⁴⁸

When viewed from the perspective of gender pay gap data,⁴⁹ or gender workforce statistics,⁵⁰ or the survey data on sexual harassment,⁵¹ the industry appears to treat female employees differently and less favourably, than how it treats male employees. There is a need to consider how the particular gender profile of the industry and the nature of the industry itself feeds into the relevant drivers of sexual harassment in the workplace⁵² - power imbalances and their abuse, a workplace culture that tolerates sexual harassment, lack of awareness or understanding of sexual harassment, use of alcohol – and what can be done to effectively manage and thus minimise the risk of sexual harassment in financial services. Our benchmark model indicates that this has to be more than policy, and even more than governance: it requires due diligence and an attention to monitoring and reporting on outcomes, the good and the bad.

Domain 4: Supply chain and suppliers

Our FY19 reference year precedes the requirement for reporting under the *Modern Slavery Act 2018* (Cth) and, with the three month delay to reporting as a response to Covid-19 for FYs ending 31 March 2020 (now 31 December 2020) and 30 June 2020 (now 31 March 2021), this domain is a work-in-progress for many of our sample FSEs, particularly the smaller FSEs in our sample.

The coding results in this domain duly reflect this fact being **RED** or **AMBER**.

As noted earlier in our discussion of Governance, our sample FSEs failed to include human rights risks as material to the core business concerns of the FSE at board level. This applied also in the supplier domain where none of our FSEs paid sufficient attention to the governance of modern slavery risks by allocating specific responsibility for the matter at Board level. This is why some FSEs scored red on this domain. Yet we can see that the larger FSEs in our sample have more developed related policies and processes around

⁴⁶ MCC [Position on sexual harassment in the workplace](#), update July 2020.

⁴⁷ MCC Report, 8.

⁴⁸ MCC Report, 8.

⁴⁹ Workplace Gender Equality Agency (WGEA), *Australia's Gender Pay Gap Statistics*, February 2020, 6 (table 2). Financial and Insurance Services with a pay gap of 22.2% as at November 2019 has the second highest gap, second only to Health Care and Social Assistance. WGEA notes this is a change from prior years where Financial and Insurance Services had the highest pay gap.

⁵⁰ It can be difficult to get a picture of the industry as the sub-industries within financial services have vastly different gender profiles. For a general industry picture (financial and insurance services), Rebecca Cassells and Alan Duncan, [Gender Equity Insights 2020: Delivering the Business Outcomes, BCEC/WGEA Gender Equity Series, Issue #5](#), March 2020 at 20 report that while 12.6% of the WGEA industry sample do not have any women as key management personnel in 2019, up to 50% have just over 50% women in these roles. A 2017 study from Frontier Advisors show that women make up only 14.2% of investment teams: [The Frontier Line](#), July 2018, 11 (chart 7), with 42.5% of Australian equity managers responding to the survey reported that they had no women in their investment teams at 12 (Chart 8).

⁵¹ Australian Human Rights Commission, [Everyone's Business: Fourth National Survey on Sexual Harassment in Australian Workplaces](#), 2018, 57, notes a prevalence rate of 39%, against a national prevalence rate of 33%. Notably on page 59 of the same report, the prevalence rate for women of 41% is higher than the male prevalence rate of 37%.

⁵² Australian Human Rights Commission, [Respect@Work: Sexual Harassment National Inquiry Report \(2020\)](#), 150-173.

supply chains. This is likely due to the fact that some of these larger FSEs have been reporting under the UK *Modern Slavery Act* requirements since 2016. These FSEs also disclose some outcomes around their due diligence processes, although this is sometimes limited to case study examples, as opposed to data that would give an overall picture of the effectiveness of their due diligence process. This is why these FSEs likely scored amber for this domain.

Disclosure of the data items by FSEs gives outsiders a better appreciation of the complexity within a supply chain while also providing a check on policy positions. For example, NAB's FY19 disclosure indicates it has 1,830 contracted suppliers, of which 74 are material.⁵³ Eighty-eight percent of the material suppliers are signatories to its Group Supplier Sustainability Principles. It also discloses that 100% of ESG risk assessments were completed for new/recontracted high ESG risk sensitive sector suppliers, but only for Tier 1 contracts⁵⁴ and excluding 'evergreen' contracts. Given its total supply chain spend was \$4.714 billion,⁵⁵ and the flow on effect of that expenditure down the supply chain, a focus on level 1 is just the start.

Given the guidance released in 2019 by Australian Border Force on *Modern Slavery Act* reporting,⁵⁶ we anticipate to see different levels of disclosures released by our sample FSEs in future years. That said, this guidance does provide some carve outs for investment and financial lending arrangements as part of the entity's operations, although there is a stated expectation that some assessment must be made 'at an overarching thematic level' of exposure to modern slavery risks via investment activities and financial lending practices.⁵⁷

Domain 5: Society

Our final domain where FSEs have an impact on human rights is throughout society at large. We examined this domain by focusing on the public policy contributions our sample FSEs made to law and regulatory reforms. Our intuition for this approach is the attention given to public policy advocacy by energy and materials companies, whereby a company's stated policy position in its own documents is to recognise climate change, while at the same time providing funding via membership fees for industry associations that deny or query climate change.

We initially identified 20 law and regulatory reform opportunities over our reference period (1 October 2018 to 30 September 2019). From issues or consultation papers or terms of reference of law reform projects, we selected one or two specific issues that best represented the potential to impact on our human rights categories. While most of the reforms we selected aimed to influence regulation targeting the financial services sector, seven of the 20 reforms had broader social impact beyond financial services.

The overall coding outcomes for the society domain were largely **RED** or **AMBER**.

Our sample FSEs were aware of reputational risk in general but do not appear yet to have made the link between that risk and their public policy advocacy in respect of social justice and human rights. While some of our sample FSEs have policy positions that appear to support wider societal concerns such as LGBTQI rights or the rights of indigenous people, these statements do not flow through to explicit public actions.

A clear example of this lack of 'flow through' relates to indigenous issues. The Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, for example, which considered reforms to introduce an indigenous voice into parliament is one such missed opportunity for making relevant contribution. Such dislocation also creates a reputational risk for those FSEs who decide to devise a reconciliation action plan but then don't lend their voice to achieving reconciliation in other ways by supporting the aspirations of the *Uluru Statement from the Heart* by lending their influential voices to that cause.

Where submissions were publicly available,⁵⁸ we occasionally observed responses from our sample FSEs and from industry associations to the same reform, but more often the message was communicated publicly by

⁵³ NAB defines 'material supplier' with reference to APRA Prudential Standard CPS 231 or a regional equivalent. These are suppliers to whom aspects of NAB's business are outsourced: paragraph 14 of CPS 231 (July 2017) defines 'a 'material business activity' as one that has the potential, if disrupted, to have a significant impact on the APRA-regulated institution's or group's business.

⁵⁴ Tier One contracts are contracts where a member of the NAB Group is a contracting party.

⁵⁵ NAB, 2019 Sustainability Data Pack, spreadsheet 'Supply Chain'.

⁵⁶ *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (2019).

⁵⁷ *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (2019), 34.

⁵⁸ In keeping with our methodology we relied only upon publicly available submissions. We found that not all convenors of our initial selection of reforms publicly released the submissions they received. Failing to release submissions which couldn't reasonably be regarded as confidential (due to the nature of what is disclosed, for example, a personal example which publicly names an individual) creates problems for all stakeholders as it is unclear who had input into the inquiry and thus who shaped the reform that ultimately

the industry associations alone. Successfully orienting finance towards human rights must indeed rely heavily on stances taken by industry as they represent a consensus view. But equally promoting human rights awareness throughout the sector can also result from individual FSEs taking leadership positions on human rights matters that relate to the finance sector's remit as well as to broader social concerns.

emerges. Financial institutions could ensure that they make available on their own websites any public submissions that they make. This doesn't satisfy the public interest in having the relevant regulatory agency or body or parliament disclosing this information. But it does provide a way for FSEs to proactively manage their own reputational risk arising from public policy advocacy.

About the project team



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David holds the Chair in Human Rights Law at the University of Sydney Law School. He is also an Academic Panel member of Doughty Street Chambers in London.

He specializes in relations between the global economy and human rights and has worked for more than 25 years all over the world with governments, international organisations, law firms, corporations and NGOs in the field.

His recent books include *Civilising Globalisation: Human Rights and the Global Economy* (2009), *The International Covenant on Economic, Social and Cultural Rights* (2014, with Saul and Mowbray)), and *Necessary Evil: How to Fix Finance by Saving Human Rights* (2018). He also has a TEDx video: *How Much Do Banks Owe Us?*



Dr Kym Sheehan

Kym's academic interests are in the area of corporate law, corporate governance and finance, with an emphasis on regulatory tools. Her research interest in human rights and business came via her initial research on a modern slavery act for Australia in 2017.

It was this research and a mutual interest in finance that led to David and Kym applying for funding via the Sydney Law School's Special Projects Scheme in 2017.

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