

# Governance for General Counsel in a Post-Hayne World

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# Panel Members

**Jason Harris**

Professor of Corporate Law  
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**Trisha Mok**

Past President, and Non-Executive Director  
Governance Institute of Australia

**Dominique Hogan-Doran SC**

Barrister & Non-executive director

# Questions for the panel

- What is the immediate impact, and the future implications for the banking and financial services sector?
- How will the role of financial regulators change?
- What flow on effects will we see on legal and practice frameworks?
- What are the lessons about culture, governance, remuneration and risk management for boards and business leaders across other industries and sectors?
- Role of General Counsel's influence internal information flow to the Board and assist with accountability?
- How can General Counsel drive adoption of these lessons in their organisations?

# Changing role of regulators

## ASIC

- [ASIC Corporate Plan 2019-2023 - Focus 2019-20](#) (28 Aug 2019)
- [ASIC Royal Commission implementation update](#) (12 Sept 2019)
- [Whistleblower Guidance](#) (Response to CP321) (13 Nov 2019)

## APRA

- [APRA Capability Review Report & APRA Response](#) (July 2019)
- [Updated APRA Corporate Plan 2018-2022](#) (29 Aug 2019)
- [APRA Enforcement Approach](#) (3 Sept 2019)
- [APRA v Kelaher \[2019\] FCA 1521](#) (IOOF case) (20 Sep 2019)

# Discussion

- Change in regulatory posture
  - Why not litigate?
  - Less negotiated settlements/enforceable undertakings
- Getting tough
  - Increase in penalties
  - Changes to criminal penalties
  - Expansion of civil penalties to cover new areas
  - Relinquishment orders
  - Expanding civil penalties to cover accessorial liability and attempted contraventions
- Focus on fairness/community expectations
  - Political expectations of regulators

# Internal information flow to the Board and assisting with accountability

- Australian Institute of Company Directors & Governance Institute [Joint Statement on Minutes of Directors Meetings](#) (August 2019)
- [ASIC Corporate Governance Taskforce on non-financial risks](#) (10 Oct 2019)
- [ASX Corporate Governance Principles and Recommendations](#) (4<sup>th</sup> edn, Jan 2019)
- Governance Institute [Managing Culture – A Good Practice Guide](#) (Dec 2017)

# Discussion

- Greater focus on managing non-financial risks
- Testing the relationship between the board and management
- Expecting committees to play a stronger, more forceful role in holding management to account
- Risk appetite statements
- Board risk committees
- Changing nature of board committees
- Dealing with information overload
- The use of personal notes during board meetings