

# **FORENSIC FORECAST**

## **2018**



McGrathNicol



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**This time a decade ago the world was in the midst of the GFC, which at the time was unforeseen by many and its impact was significant. A decade on and organisations continue to seek economic recovery.**

Tighter regulation, increased regulatory scrutiny, significant media attention and expectations for greater transparency are balancing the growth ambitions of Government and the business sector.

The Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry will highlight instances of poor conduct and inadequate action by management. Ultimately, we are seeing the regulatory environment permanently change in Australia.

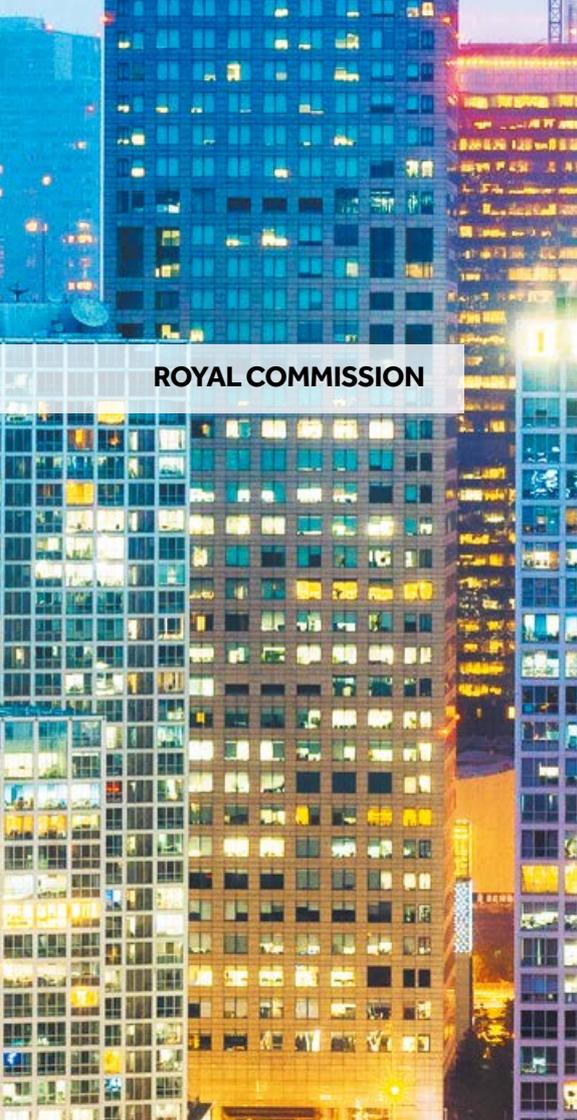
While being aware of the issues and risks is important, the response to an incident whether proactive, or reactive, is what ultimately dominates much of the boardroom dialogue and scrutiny once uncovered.

This year's Forensic Forecast provides awareness into the important issues and risks for business and Government agencies to be alert to, and prepared for, in 2018.

The McGrathNicol Financial Crime Exchange (FCX) will continue research in this area and provide insights to our clients.

What the year ahead will deliver remains unknown. What is certain is that our clients are focussed on minimising the impact of unwanted events whether they arise from regulatory change, litigation, cyber events or financial crime.

**Matt Fehon**  
Partner, McGrathNicol Advisory



## ROYAL COMMISSION

# HOW WILL YOUR ORGANISATION RESPOND?

## *The Royal Commission inquiry looks to shake up the financial services sector.*

The Federal Government has announced the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

The Commission's terms of reference centre around conduct and culture within the financial services sector. This follows significant political and media attention surrounding allegations and instances of misconduct over the past decade.

The inquiry has the power to summons witnesses and can authorise the execution of search warrants. Regulators and Government agencies may also be impacted if they are asked to respond to queries or subpoenas from the Commission.

How will your organisation prepare? Start by establishing a Royal Commission Response Team that is

sponsored by a senior member of the organisation. The next steps should include:

- identifying and reviewing past complaints or relevant files;
- identifying where potential relevant documents and data are located; and
- developing systems and procedures for sourcing, hosting, processing and reviewing the data.

Finally, rigorous quality assurance checks are necessary to ensure organisations meet their obligations while preventing inadvertent disclosure. Establishing a database in electronic form will aid the timely provision to the Royal Commission should a Notice be received.



## CYBERSECURITY

# 2018, A YEAR OF TRANSPARENCY

***Why? Because customers will demand it and the OAIC will regulate it.***

Cyber is now a well-established buzz word, discussed at length in mainstream media. There is, perhaps, an element of Cyber-fatigue creeping in.

Boards and Executive teams are balancing the focus on Cyber, with equally important strategic initiatives like extracting value from data, increased regulatory pressures and maintaining relevance against competitors in an (evolving) marketplace made smaller by the Internet.

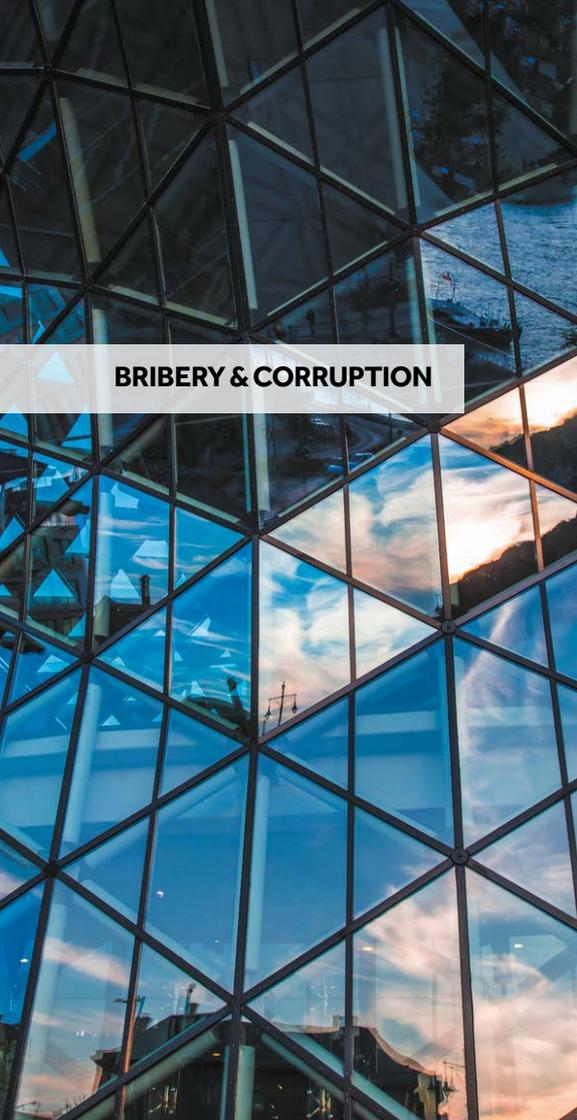
We predict 2018 will be the year of transparency.

There is much anticipation surrounding the Notifiable Data Breaches (NDB) scheme under the Australian Privacy Act 1988, coming into effect in February 2018. While it is unlikely there will be a wave of new breaches made public that were previously swept under the carpet, the NDB scheme

increases breach visibility for those of us watching, or those affected.

In our view, an important role of the NDB scheme will be to reinforce the relationship between Risk, Privacy and IT professionals and the need to have an effective, collaborative approach to proactive and reactive Information Risk Management. This may mean we see a flurry of activity from organisations that are less prepared, however, there is little excuse for inaction.

Why? Because our customers will demand it, the Office of the Australian Information Commission (OAIC) will regulate it and the Government will continue to provide clear guidance to help us all become trustworthy digital citizens. As a result, we will see an increase in our specialist data governance and cyber advisory services during 2018.



## BRIBERY & CORRUPTION

# ANOTHER YEAR, ANOTHER PROMISE

## *Will 2018 be the year foreign bribery moves up on the Government's agenda?*

One particular resolution that has been on the agenda of governments, law enforcement and corporates for many years, is the investigation of executives and companies who choose to pursue the high-risk option of engaging in payments to foreign government officials or third parties to secure contracts.

While we await the outcome of several current foreign bribery investigations by the Australian Federal Police, the Australian Government has made a significant step forward by introducing the Crimes Legislation Amendment (Combatting Crime) Bill 2017 that will strengthen Australia's anti-bribery and corporate misconduct laws. This amendment will include an offence for failing to prevent foreign bribery and a Deferred Prosecution Agreement scheme.

A Senate Committee report is due for release and we can expect parliament to vote on the laws.

Domestic factors, however, are now creating further concern, particularly the influence that Chinese business is having on major Australian political parties. When business and politics overlap, whether domestically or overseas, the opportunities to improperly influence key decisions increase.

It is critical that organisations and government agencies implement rigorous due diligence and risk management practices to protect the business and individuals from an approach.



## PROCUREMENT FRAUD

# THE RISK OF EXTENDED SUPPLY CHAINS

## *Is your organisation prepared for Australia's impending modern slavery legislation?*

We expect the number of well known organisations dealing with financial and reputational damage associated with underpaying employees' entitlements will continue to grow in 2018. It is therefore no surprise that Australia is seeking to establish legislation set to mirror the UK Modern Slavery Act 2015, to encourage organisations to minimise the risk to their vulnerable employees and increase transparent engagement with their supply chains.

As Australia considers its own version of modern slavery legislation, knowing exactly who you are doing business with and who they do business with, is more important than ever. It is expected that organisations will be obligated to formally disclose the sectors they operate in, the complexity of their supply chains and, importantly, information about relationships with global suppliers and the integrity of those representing them.

A robust supplier due-diligence process, along with a procurement-fraud analytics program will help organisations identify higher-risk relationships, and facilitate monitoring and management going forward. Particular risks that businesses should consider include those relating to:

- country;
- sector;
- third party business partners;
- bribery and corruption;
- transactions; and
- human rights violations.

In 2018, it will be incumbent on all Australian organisations to commit to ramping up procurement and supply chain corporate governance to prevent, detect and address procurement risks and the many adverse effects of modern slavery.



## WHISTLEBLOWING

# SIGNIFICANT CHANGES AHEAD

## *Whistleblower reforms to be implemented in 2018, however is Australia still lagging behind?*

A lot happened in whistleblowing in Australia in 2017 and this heightened activity will continue into 2018.

The Whistleblower Protections Report by the Parliamentary Joint Committee on Corporations and Financial Services was released and included 12 recommendations to reform Australia's existing whistleblower provisions. The Federal Government then released an exposure draft of the Treasury Laws Amendment (Whistleblowers) Bill 2017.

The new legislation will significantly strengthen Australia's whistleblower provisions including expanding who can seek protection, providing for compensation for whistleblowers who are victimised and requiring large organisations to develop and publish a whistleblower protection policy. The Government's intention is that the new law will be effective from 1 July 2018.

Two recommendations not included in the draft legislation were:

- the creation of a Whistleblower Protection Authority; and
- legislating for cash rewards to whistleblowers similar to the bounty scheme in the US.

It is likely that these will be further considered by the Government once the current legislation becomes law.

Organisations should be reviewing their current reporting frameworks and seeking specialist expertise to demonstrate that they are implementing procedures consistent with effective whistleblower reporting practices.

McGrathNicol has been a long-term advocate for whistleblower reform and is contributing to the development of a proposed global whistleblower protection standard.



## DISPUTES

# LITIGATION FUNDERS ARRIVE

***International arbitration and class actions will continue to increase in 2018.***

Combine domestic construction and resources activity with belt and road development in China and the prospects for growth in international arbitration look strong.

Continued activity from local organisations engaged in overseas hearings will hopefully see Australia further develop its place as a regional seat for Asia-based disputes. It is timely that in April, Sydney will host the ICCA 2018 Congress. As attendees from around the world listen and debate the conference theme of evolution and adaption in international arbitration, Australia has the perfect opportunity to showcase its skills to the rest of the world.

There is no slowdown in the depth and breadth of class actions. The increasing participation of institutional investors as class members makes for more attractive

funding propositions, as does the Federal Court's endorsement of common fund orders. As more international litigation funders arrive, the volume and range of class actions will increase.

As the sophistication and prevalence of both of these areas grow, so do the expectations of the quality of financial analysis and evidence. Legal teams and their clients should seek forensic accounting experts with established experience in valuations and loss methodologies to help them meet these expectations and keep themselves at the front of the pack.

Over the past 18 months McGrathNicol has bolstered its litigation support practice with additional Partners bringing significant international arbitration and forensic accounting experience.

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