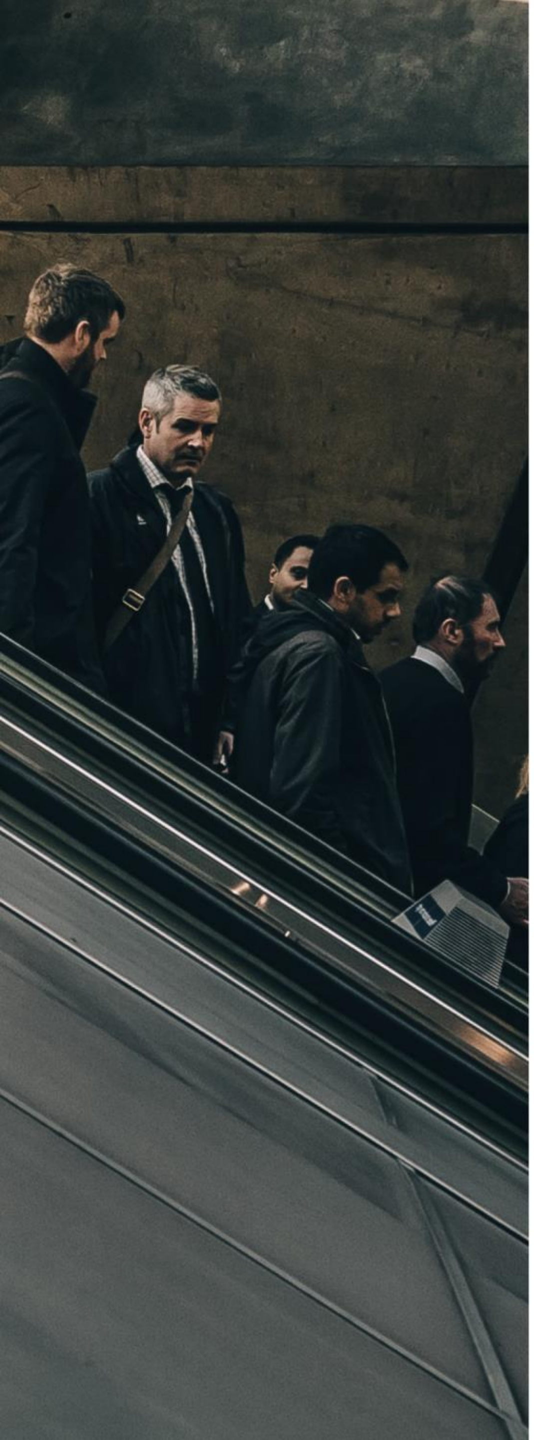
WORKPLACE SAVINGS OUTLOOK 2023

LEGAL AND REGULATORY UPDATES

AUCKLAND & WELLINGTON | 16TH FEBRUARY 2023, 5PM-7PM

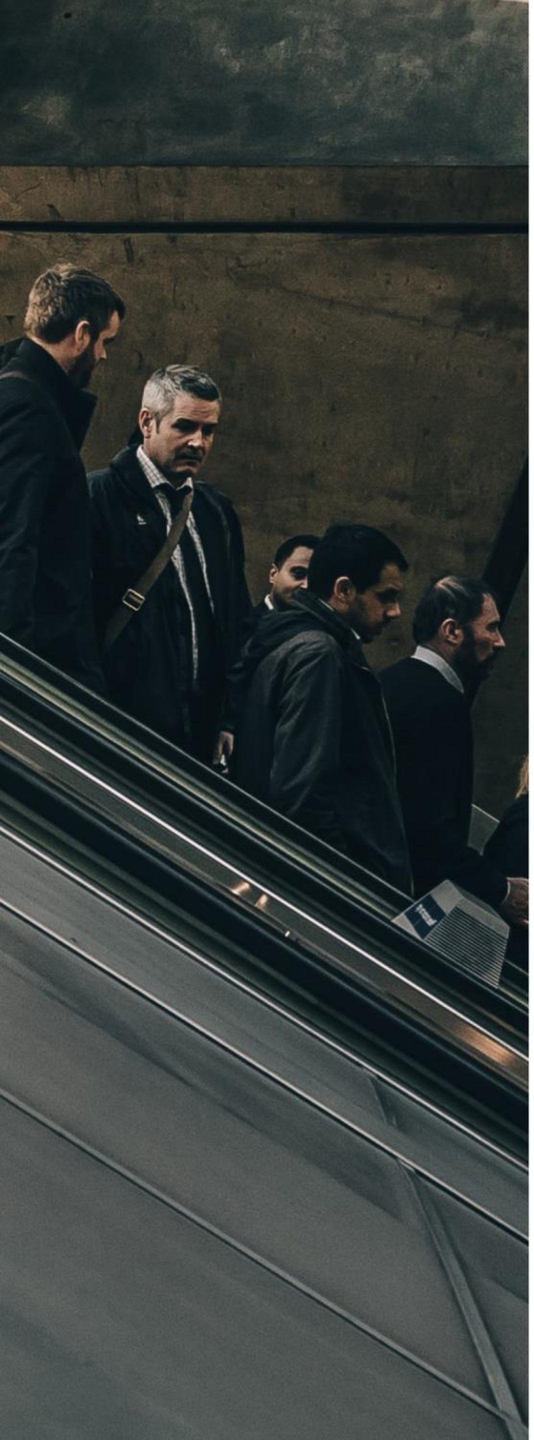
Kindly hosted by chapman tripp

Financial Services Council NZ



WELCOME

Troy Churton
Head of Membership and Partnerships,
Financial Services Council



SPEAKERS

Mike Woodbury
Consultant,
Chapman Tripp

Alasdair McBeth
Partner,
DLA Piper

Michael Burrowes
Senior Legal Counsel,
Regulatory Policy
FMA

Nick Valentine
Partner,
DLA Piper


WORKPLACE SAVINGS
OUTLOOK 2023
LEGAL AND REGULATORY UPDATES
AUCKLAND & WELLINGTON | 16TH FEBRUARY 2023, 5PM-7PM
Kindly hosted by
chapman tripp
Financial Services
Council NZ

chapman tripp

General Legal Update

Mike Woodbury

8 February 2023

Latest restricted schemes statistics

- 73 remaining stand-alone restricted workplace savings schemes (*2021: 77*):
  - assets $10.684 billion (*2021: $10.253 billion*)
  - 70,020 members (*2021: 69,509*)
  - 4,658 pensioners (*2021: 4,907*)
- 6 restricted legacy schemes:
  - assets $1.725 billion
  - 26,272 members (only 4,084 contributing)
- 4 restricted KiwiSaver schemes:
  - assets $525 million
  - 12,191 members (9,426 contributing)
- Overall 93 restricted schemes (with NPF and master trusts):
- assets $14.8 billion and 124,626 members

Disclosure relief for restricted schemes

- Financial Markets Conduct (Restricted Schemes-Disclosure and Reporting) Exemption Notice 2022 – took effect in 30 September 2022 quarter
- Fund updates – exemption for defined benefit scheme with members exposed to investment risk (interest-based withdrawal benefit and/or voluntary account)
- Quarterly limit breaks reporting:
  - exemption if nil (and reporting deadline now 15 working days)
  - reports now annual (within 15 working days) and as required
- Quarterly related party transaction certificates reporting – same
- Member statements (confirmation information) for defined benefit scheme – “exemption” allowing benefits-based information as at year-end

FMA value for money initiatives – latest developments

- April 2021 guidance note: to help managers demonstrate value for money (as best interests duty includes *“acting in members’ best interests from a value for money perspective”*)
- Managers should continuously review fees and value for money (and conduct a formal annual review)
- Key points for restricted scheme trustees (“price takers” not immune):
  - develop discipline of reviewing VFM at least annually
  - review service providers *and selves* – need not be overly granular but is each scheme still *operating cost-effectively* in terms of services and value?

Green shoots everywhere!

- Climate-related disclosures (CRD) legislation:
  - retail scheme managers managing over **$1 billion**
  - by April 2024 (for 2023 calendar year) annual disclosures - governance arrangements, risk management, strategies, metrics and targets for mitigating and adapting to **climate change impacts**
  - climate statements will be **public**
  - restricted schemes **<u>exempt</u>** but can expect useful benchmarks and learnings
- July 2022 FMA report on integrated financial products disclosures:
  - improvement needed in (e.g.) explaining exclusion and inclusion selection process, risk and return trade-offs and what happens if selection criteria no longer met
  - relevance for restricted schemes – useful prompts on testing assertions by underlying managers
- Investor Stewardship Code – 30 September 2022:
  - tangible step in **maturing of RI approache**s in NZ, towards **stewardship** (‘active ownership’) complementing negative screening
  - voting, direct engagement, filing shareholder resolutions, advocating for policy changes

CoFI (Conduct of Financial Institutions) legislation

- Fair conduct and licensing regime:
  - Fair conduct **principle** and **programme**
  - **Licence** conditions, including (relevantly):
    - **outsourcing** – minimum capability and process requirements
    - **business continuity plan** - appropriate for scale and scope, to support compliance with fair conduct programme
    - **record keeping –** timely, adequate (evidence fair conduct programme implemented, maintained and regularly reviewed, reasonable steps to comply, identified deficiencies promptly remedied)
- Restricted schemes <u>exempt</u> but (again) will gain useful learnings:
  - Further illustrates move to **member-centric** expectations – “conduct over box-ticking”
  - Useful reminders of how to ensure trustees can demonstrate:
    - conformity with core **fair conduct principles** and that they **monitor delegates’ capability** and conformity
    - that they note and **remedy** identified material deficiencies

“Decumulation” (drawdowns)

- 50% of KiwiSaver members now retain balances after reaching 65
- Support for simple, readily available and generalised guidance on investment mix and drawdown options for new retirees (and contacting members at near-retirement age milestones)
- Annual member statement content requirements (retail KiwiSaver)
- FSC guidance pending – for trustees whose schemes offer retention to make available to members

Other relevant developments

- Management of a retirement scheme remains a GST-exempt supply – means GST treatment of Trustee directors’ fees still needs definitively confirming
- Work continues on remediation of timing mismatch between:
  - annual report and financial statements – 4 months
  - member statements and fund updates – 3 months
- Updated FSC guidance – SFH withdrawals (completed) and Serious Illness (pending)
- FMA guidance and expectations for keeping proper accounting records – February 2023
- Ministry of Justice AML/CFT review:
  - MoJ reported November 2022 on review of AML/CFT Act to identify necessary/desirable amendments
  - 200+ recommendations – amendments to Act/Regulations or operational enhancements
  - *“limited employer superannuation scheme”* currently enjoys (effectively) full exemption – core condition is all contributions through payroll (with permitted exceptions) and contributions determined as a salary percentage
  - settings of that exemption are under review and it appears MoJ *may* propose a tightening

Consolidation of small DB schemes (1)

- Stranded schemes:
  - 22 DB schemes with assets below $25 million
  - 20 (and counting) schemes (or sections) now pensioner-only – *collectively* $140 million and 596 pensioners
  - average sub-$25 million DB scheme incurs annual administrative costs of around $120,000
  - Average pensioner-only scheme $115,000
- Benefits of consolidation - significant cost and time efficiency gains from pooling governance, service provision and assets
- Excellent learnings from UK and Australia
- So report commissioned by FSC – enabling a DB master trust solution:
  - separate, ring-fenced section for each employer participant (funded separately)
  - each employer participant has choice of investment strategy from whole-of-scheme underlying funds
  - benefits provisions mirrored exactly (participation deed or schedule)

Consolidation of small DB schemes (2)

- Master trust a (re-purposed) restricted scheme – retention of concessionary treatment
- Amalgamations via FMA-approved transfers of all members and assets:
- pensioners-only solution (at least initially) – no “subscription” so no need for Offer Register entries
- Enabling this solution necessitates:
- amending Income Tax Act 2007 (section EY 11) to enable FMA to approve master trust as exempt scheme (despite having non-associated employers) – straw man wording drafted
- scheme specific (and suitably conditional) Exemption Notice:
  - allowing retention of **restricted** status despite non-associated employers
  - allowing **pensioner** on-boarding (precedents)
  - actuarial reports for each respective **section** (only) – or possibly outright **exemption** (just vested benefits calculations annually)
  - certain **annual reporting** obligations to be satisfied by section-specific reporting only
- Existing legislation/exemptions already allow segregated employer sections (and section-specific financial statements) and participation deeds

Consolidation of small DB schemes (3)

- Human Rights Act exemptions non-replicable
- Possible need (in some cases) for more muscular funding obligations
- At least a 2 year project
- Commercial attractiveness needs re-confirming:
  - practical necessity for **pledged participation** pre-commercialisation
  - consolidation vehicle will need assured **critical mass** from its inception


WORKPLACE SAVINGS OUTLOOK 2023
LEGAL AND REGULATORY UPDATES
AUCKLAND & WELLINGTON | 16TH FEBRUARY 2023, 5PM-7PM
Kindly hosted by
chapman tripp
Financial Services Council NZ

Vulnerable Member Framework for Trustees

Financial Services Council

Workplace Savings Outlook 2023

DLA PIPER

What I will cover

1. What is the purpose of the Vulnerable Member Framework?
2. Who is a vulnerable member?
3. Identifying vulnerability
4. Context for restricted schemes
5. Escalation process for vulnerable members
6. How you can address vulnerability
7. Ongoing reviews
8. Next steps for trustees

What is the purpose of the Vulnerable Member Framework?

- The Vulnerable Member Framework is designed to assist trustees to:
  - understand vulnerability and its impact on members;
  - identify vulnerable members and their touch points;
  - develop a scheme vulnerability framework alongside administration managers; and
  - improve experience and outcomes for vulnerable members.

Who is a vulnerable member?

Definition

- A "vulnerable member" is someone who, due to their personal circumstances, is **especially susceptible to detriment**, particularly when a trustee (or its agents) is not acting with appropriate levels of care.
- Vulnerability is primarily determined by "circumstances" rather than being specific to any "type" of person.
- Trustees of workplace savings schemes must consider member vulnerability to help vulnerable members make good decisions about their savings.
- Vulnerability may affect members' ability to make good decisions about their entitlements or membership under their scheme, which could affect their savings.
- In some cases, a member may not realise they are in a vulnerable situation.

Identifying vulnerability

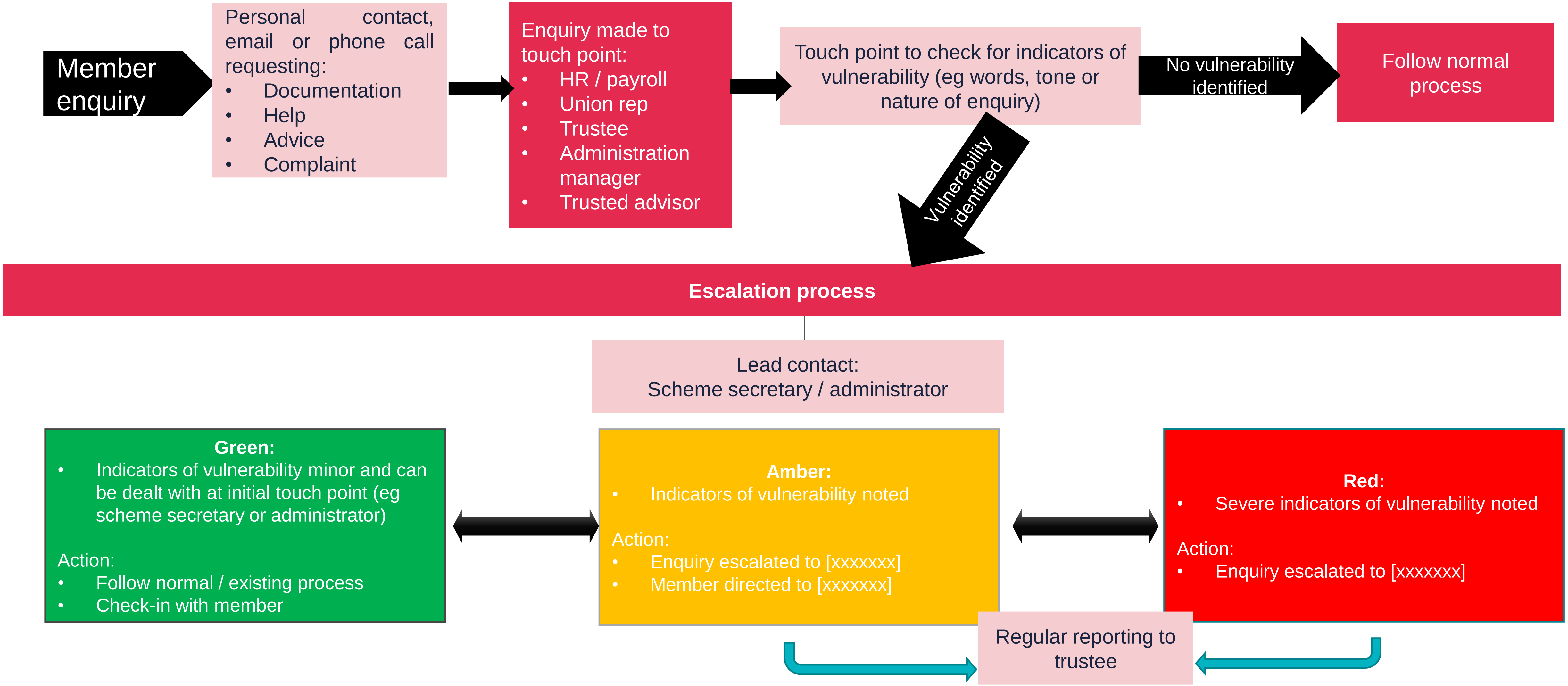
Health and physical factors	Life events	Resilience	Capability
Mental health issues	Recently migrated	Low savings	English as a second language
Physical health issues	Caring responsibilities	Loss of income / employment	Low digital literacy levels
Addiction issues	Bereavement / ending of relationship	Lack of self-confidence	Age-related impairment
Learning disabilities	Non-standard requirements: ex-offenders, children in care	Over indebtedness	Low level of financial capability, including limited understanding of their membership

Context for restricted schemes

For restricted schemes, vulnerable member frameworks:

- Must be practical in implementation;
- Should not be a replacement or alternative for the employer / sponsor HR support role for staff;
- Need to have regard to other legislative requirements impacting schemes, particularly related to privacy and financial advice limitations;
- Need to consider that members may have multiple touch points with scheme representatives / associates;
- Need to have regard to the trustee obligation to ensure appropriate expenditure is undertaken on behalf of membership in general; and
- Should recognise how vulnerability is dealt with in existing scheme arrangements which deal with events such as death, insurance and hardship.

Escalation process for vulnerable members



How you can address vulnerability

Effective support services

- You should consider what, if any, **specialist support services or other resources will be available** to identify vulnerable members.

Communication

- Communication to vulnerable members must be **clear** and **provided in a way they can understand**.

Training

- You should ensure that all member touch points and others involved in the scheme are aware of the expectation in identifying and dealing with vulnerable members and, ideally, **receive vulnerability training**.

Changes to your scheme

- Changes to your scheme must **avoid potential harmful impacts on vulnerable members**. This includes trust deed amendments or new investment options, benefits or withdrawal rights.

Ongoing reviews

- Your vulnerable member framework should be **regularly reviewed and validated**.
- Responsibility and accountability for monitoring vulnerability rests with the trustees.
- The trustees should work with their administration manager to regularly evaluate and report on the needs of vulnerable members, how these are being met and how to improve vulnerable member outcomes.

Next steps for trustees

1. Meet with your administration manager to discuss and develop your scheme’s vulnerability framework.
2. Consider what, if any, support services will be available as part of your scheme’s vulnerability framework.
3. Communicate your new vulnerability framework to those involved in the scheme.
4. To the extent appropriate, provide vulnerability training to member touch points and others involved in the scheme.
5. Consider how you will communicate your scheme’s vulnerability framework to members.
6. Add member vulnerability as a standing agenda item at trustee meetings.


WORKPLACE SAVINGS OUTLOOK 2023
LEGAL AND REGULATORY UPDATES
AUCKLAND & WELLINGTON | 16TH FEBRUARY 2023, 5PM-7PM
Kindly hosted by
chapman tripp
Financial Services Council NZ

State of Play: Key Cyber Trends

Victim Shaming is on the Rise

- Increased use of multi-extortion by ransomware groups to “name and shame” victims on leak sites, increasing pressure on the victim to pay

RaaS is lowering the technical bar

- Evolution of “entrepreneurial” threat actors looking to capitalise on payouts and notoriety
- RaaS makes carrying out attacks that much easier, lowering the barrier to entry & expanding the reach of ransomware

Attackers using more zero-day vulnerabilities

- Ransomware attacks often leverage a wide variety of vulnerabilities as an initial vector of compromise
- Increasingly, ransomware groups are monitoring & quickly leveraging zero-day vulnerability for attacks

What we’re seeing in NZ

- Increasing number of breaches originating in the supply chain.
- Cadence and scale of breaches increasing.
- Clear approach from regulators that while an organisation’s cybersecurity function can be outsourced, responsibility for cyber incidents cannot.
- Privacy Commissioner and regulators taking a tougher stance.
- Media and the court of public opinion are also less forgiving.

A Look Ahead – Top Predictions for 2023 & Beyond

Source: Gartner

World’s personal information to be covered under privacy laws by 2023

75%

Third parties using cyber security risk as a primary determinant for business transactions by 2025

60%

Boards to have dedicated cyber committees by 2025

40%

CEOs to mandate a culture of organizational resilience by 2025

70%

What can you do? Governance!

1. Make measured investments in cyber capabilities based on risk
2. Continually update your model to reflect emerging threats
3. Develop/ align the right cyber risk management model
4. Continually update your model to reflect emerging threats
5. Build/promote risk-aligned security organization

Align to business priorities, not tech architecture

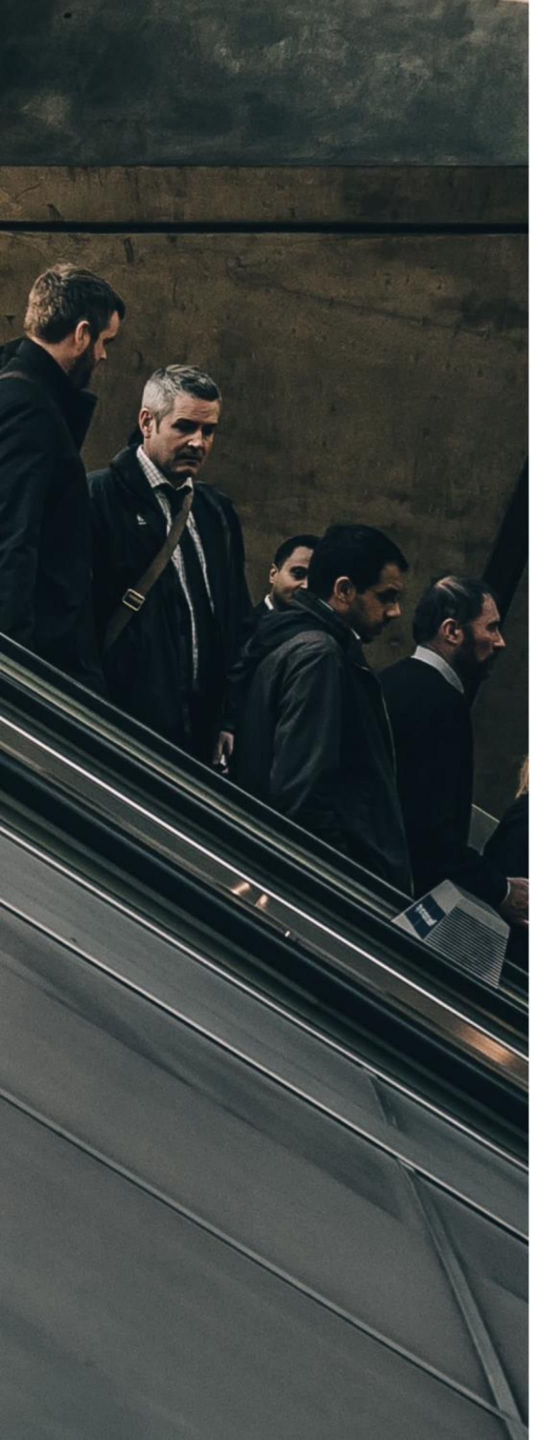
An effective solution is not predicated on choosing either insurance or prevention, but adopting a plan that assesses the totality of a firm's cyber risk and allocates resources accordingly while adhering closely to business priorities.

Such an operational model requires a customized determination of a firm's risk tolerance and an evaluation of its true cost of cyber security.

Doing so requires answering some fundamental questions:

- Do you understand your risk tolerance?
- Are your programs and business model aligned with today's risk landscape in light of your risk tolerance?
- And are they future-ready, capable of evolving as the threat landscape changes?

A holistic approach to cyber security manages risk smarter and more efficiently by enabling companies to balance risk acceptance, mitigation and transfer (insurance), and in the process help maximize protection of corporate brand and reputation. Here's a holistic approach that we recommend in five steps.



CLOSE

Thank you for attending