



YS UP GOVERNANCE AND BOARDS PODCAST

Episode 21 – Whistleblower, Modern Slavery, AML/CTF, ABAC and AFSL's with Kathryn Morgan

Transcript

Intro:

Welcome to YS Up Governance and Boards podcast brought to you by 3YS Owls Governance Consultants. Covering hot topics in governance, risk, latest regulatory changes and issues keeping directors and executives awake at night. Here are your hosts Ainslie Cunningham and Deb Anderson.

Deb: Anderson

Welcome to today's episode of YS Up. Today, we're joined by Kathryn Morgan, who's a senior associate at McCullough Robertson Lawyers. Welcome Kathryn.

Ainslie Cunningham:

Hi, Kathryn.

Deb Anderson:

Kathryn is a financial services regulatory lawyer, specialising in white collar crime regulation and compliance. Kathryn acts for clients from a variety of industry sectors, including mining and engineering firms, professional services firms, educational institutions and financial services providers. She advises on matters regarding anti-money laundering and counter terrorism, AML/CTF as it's well known, international sanctions, foreign bribery, modern slavery, whistleblower protection laws and other white-collar crime issues.

Deb Anderson:

Kathryn brings both in-house and private practice experience, having previously worked as an in-house legal counsel for the wealth management business unit at the Commonwealth Bank of Australia. Kathryn's experience includes advising various clients on their obligations as existing or potential reporting entities under the AML/CTF Act and advising various listed and unlisted, Australian and multinational entities in relation to addressing a range of integrity risks applicable to their operations, including UNSC sanctions regimes.

Ainslie Cunningham:

Welcome Kathryn.

Kathryn Morgan:

Thanks guys. Good to be here.

Ainslie Cunningham:

So, tell us a little bit about your background and your role at McCullough Robertson.

Kathryn Morgan:

Sure. As Deb mentioned, I was previously at the Commonwealth Bank of Australia, working as an in-house counsel and that's probably where I fell in love with a culture of compliance and good corporate governance and understanding how you can build a business that does the right thing by design. Also, fell in love with financial services law as well, not that many people ever say that, but as a subject matter. And because being

a highly regulated industry and all of our clients have a multitude of regulators on their backs at all times, it was a really interesting intersection.

Kathryn Morgan:

First of all, I took on AML/CTF and then as other changes have come through particularly, modern slavery and the new whistleblower protection laws has fallen in with AML/CTF as well. And before I knew it, I was the go to person at McCullough;s for a lot of those issues and I have been there for about three and a half years now, So sort of gave up the in-house back into private practice rather than the other way around.

Ainslie Cunningham:

Now, here you are.

Kathryn Morgan:

And now here I am.

Ainslie Cunningham:

So, tell us a little bit about the work that you do in terms of AML and CTF.

Kathryn Morgan:

So, there's three main sectors that are regulated under AML/CTF laws in Australia that came into effect in 2007. It was off the back of 911, actually, that a lot of sweeping changes worldwide came through in relation to AML/CTF, and particularly the counter terrorism financing aspect of that. And Australia was quite late to join, but there was a lot of pressure for us to step up our game and try and comply. We're a member of FATF as well, which was a big part of that as well. But financial services sector is one of the main ones, so most of my main clients are regulated under the Act. But there's also bullion, so gold trading and gambling as well.

Ainslie Cunningham:

So, in terms of modern slavery reporting, how has that played out with the changes recently?

Kathryn Morgan:

It's really interesting actually. It obviously came into effect in 2019, so it's not necessarily new law now, but the first set of reporting requirements are now coming up. They have all been pushed back by three months due to COVID like most regulators. They are trying to help people comply with their obligations because everything's up in the air at the moment. But it's been a slow burn and that's not surprising because it's fairly new legislation and not a lot of countries have modern slavery laws in effect yet, so the UK brought theirs in, in 2015 and Australia's Federal Act does draw quite heavily on that framework. But I'd say probably the last three months, there's been a significant increase in the momentum and people asking questions and starting to put together their frameworks in the modern slavery space. There was an initial flurry when the act first passed, but I would say there's a lot more coming through now, which is actually quite interesting.

Deb Anderson:

So, there is a reasonably high threshold isn't there? In terms of, is it a hundred million dollars in annual turnover?

Kathryn Morgan:

Yeah, yeah. And that's consolidated revenue. So, if you've got a corporate structure, you would have to look at all of the revenue for any companies sitting underneath the head company in Australia. So, in terms of... Sorry, let me start that one again. In terms of having to report as a mandatory requirement, that is the threshold, but there is the option as well of voluntarily opting in. And we have had a couple of clients who have wanted to do that. I think because, reputationally, and given that as a trend for a lot of companies to comply with environmental standards, transparency in their supply chains and that, I guess, clean movement as well. It's a good look if you're complying with the act, even if you don't have to.

Deb Anderson:

So, from a practical perspective, you've got to look at your whole supply chain and see where all those goods or services are coming from. From a practical perspective, how do you go about doing that?

Kathryn Morgan:

Well, I think it's important to note that. It's not saying that you have to look at your supply chains and be absolutely certain that there is no modern slavery in your supply chains because quite frankly, that is

impossible. Anyone that has a smartphone has benefited in some way, shape, or form, from modern slavery, unfortunately. But what it is about doing is, trying to create as much transparency as possible, given the nature of your business, given the types of goods and services that you're providing, and where possible, trying to remove any obvious or any instances of modern slavery. So, it really needs to be looked at on a case by case basis.

Kathryn Morgan:

So if, for example, you're manufacturing technology equipment and you're getting a lot of raw materials from a country that's a vulnerable jurisdiction, the kinds of checks, and balances and the due diligence that you're going to put in place for those suppliers is going to be very different for a small accounting business that employs five people and might occasionally buy some merchandise from China. Both require due diligence and both would require checks. And obviously, the latter businesses are unlikely to be captured by the mandatory criteria and having to report, but it's the framework that any business can and probably should implement.

Ainslie Cunningham:

Yeah, it's probably a lot easier for the larger manufacturing type of organisations who are already probably familiar with partnering with suppliers that meet ISO standards, and they have those third party surprise audits and all that stuff that probably helps strengthen that element already.

Kathryn Morgan:

You're absolutely right. And that's probably why the threshold is in fact so high. No one is saying that you absolutely have to do this, but at that point, that's a sufficiently big business that you do have that organisational capability to start putting steps in place and start really asking questions of your suppliers. And also, that kind of information asymmetry when you're entering into supplier agreements, if you're a company or a business that big, you actually carry a lot more weight when you're entering into that contract. And you can ask those questions of your suppliers saying like, "Where are you getting this from? Can you provide a warranty to us that you're not engaging in any slavery-like practices?"

Deb Anderson:

As opposed to go into office works where you get your stationery from and asking them.

Kathryn Morgan:

Exactly. I'm pretty sure the checkout person at office works is not going to answer those questions for you.

Ainslie Cunningham:

No. Definitely not. So how do you get around those types of things? Obviously, there are constraints where you reached the end of the line where you can, I guess, have that kind of inquiry. How do you get around reporting on that basis?

Kathryn Morgan:

Well, you may not be able to take it further. And in that instance, that's what you say. You say, "These are the things that we did in this reporting period, to try and increase the transparency on our supply chains. And this is how many levels we took it down." Like if you're buying IT equipment, you're not going to request that you have a report of where the lithium in your battery in your laptop came from, like that's not necessarily appropriate for most people. But if you are the company that makes lithium ion batteries, you probably would want to undertake those checks with your supplier.

Kathryn Morgan:

So, like I said, it is sort of this relative concept and you would look at it on a case by case basis and be like, "Well, this is appropriate for our business and this is why we think it's appropriate." And there is really good online resources and guidance around what that could potentially look like for your business.

Ainslie Cunningham:

That's really good practical tips.

Deb Anderson:

What are some other, for our listeners, what are some of the online content and the websites that they can go to, to get some assistance with that?

Kathryn Morgan:

So, the Department of Home Affairs who is responsible for administering the modern slavery act, they've actually released a reporting guide... Oh sorry, guidance for reporting entities and it's an incredibly detailed document, it's really well put together. And it actually has annexures with a whole bunch of resources for different sectors and different supply, like goods and services and things that are inherently high risk. So, it's the kind of the thing that you can look through and say, "Well actually, we touched on all of these sectors and maybe we would want to have more robust due diligence processes for these particular things. So, it helps give a bit of context around what you can and should be doing.

Kathryn Morgan:

More broadly, Anti-Slavery Australia is a really great organisation that puts a lot of what is going on in perspective. I found it quite helpful when I first started learning about modern slavery because I think when you think of modern slavery, you have this very specific mental image and it can be a bit confusing, because you think, "Slavery. Slavery doesn't exist." And unfortunately, it does and I think it helps you understand why you would want to be complying with the act, especially because at the moment, there's no repercussions or penalties if you don't comply under the federal act. But yeah, it really helps you understand why you should be complying with it.

Deb Anderson:

So, what's the first reporting date, if you've got a 30 June year end?

Kathryn Morgan:

So, for 30 June year end, it was originally the end of the year. So normally, it's a six-month deadline, your financial year finishes six months later than your report. But as I mentioned earlier, that's been extended by three months, so you're now looking at the 31st of March. And then for calendar years, I believe it's the end of the year now. And then, for foreign years... No foreign years, it must be the end of the year, sorry.

Deb Anderson:

Yeah. That's okay. I've put you on the spot with that one, sorry Kathryn.

Ainslie Cunningham:

So, in terms of the whistleblower protection laws that were strengthened earlier this year, how have you found those have been playing out for some of your clients or?

Kathryn Morgan:

Interestingly, also a slow burn, which was probably more surprising, given there is now a penalty, if you are required to have a compliant policy and you don't have one. And particularly as well, the fact that it does provide a level of benefit for the company itself, having a compliant whistleblower policy in place. So, the laws actually came into effect as a... I'm sorry, the middle of last year. And then, the requirement to have a policy had a delayed period, and that came into effect at the start of this year. But we were encouraging clients as much as possible to put something in place well before the deadline, just because it's there for their protection as well. And at least having a think about what their internal processes and procedures were going to look like, and how they were going to manage any disclosures that were made under the new framework, given it had been expanded so significantly.

Kathryn Morgan:

But we had a very big flurry in December with people rushing to try and get something in place for the 1st of January. And interestingly, we've also had this second wave, which is a bit of a triggering statement at the moment, isn't it? But a second wave of whistleblower policy reviews, probably in the last three months. I think people were rushing to get something in place for the first of Jan, and now they're reviewing how well that works and whether it's really appropriate for their business and tailoring a bit more to be more effective for their business.

Deb Anderson:

I think, because one of the challenge is when, like you said, they're doing it in a hurry, is whether they're actually implementing it in training, rather than just doing a, set and forget it, "We've done it. Tick the box," mentality.

Kathryn Morgan:

Yeah, and it is not a policy that you can do that with. There are quite a lot of clients again, around that December mark who they're like, "Can you just give us a standard policy?" I'm like, "That doesn't really exist?"

The whole point of this legislation is that it really needs to be something that's quite adaptable, quite flexible, it works for your business, it works with your reporting lines and it's something that people can and will comply with, because the penalties are huge under it. It's a really important area of law, and it's a really messy area of law as well. I think even as a lawyer, you read the legislation and you read the regulatory guidance that's come out and you're like, "Oh yeah, that makes sense."

Kathryn Morgan:

And if you've ever spoken to anyone who's actually had to blow the whistle in their business or speak up about something that they saw that was going on that was inappropriate at their business. It's incredibly, emotionally stressful. It often ends their career at least at that business. But often, particularly, in Australia where everyone knows everyone. In certain circles, it can be completely career-ending and just the long-term detrimental effects of being victimised or being pushed out of something because you've raised concerns, it's really horrible.

Deb Anderson:

Yeah. So, it's put there to try and protect them but...

Kathryn Morgan:

Yeah, exactly.

Deb Anderson:

Whether or not that has the effect that it should, but I guess time will tell.

Kathryn Morgan:

Yeah. And I think it's the first step towards building this culture of compliance, because as a business, you want people to be able to speak up if something's going wrong.

Ainslie Cunningham:

And you want them to be able to speak up in a trusted environment before they blow the whistle externally.

Kathryn Morgan:

Well, exactly. And particularly under this new legislation, with the ability for people to make public and/or emergency disclosures, like you said, you definitely want them to come to you and raise those concerns before it ends up on the front page of the AFR for example.

Ainslie Cunningham:

Absolutely.

Deb Anderson:

Yeah. And I guess too, it helps, probably if you've got an independent third party that's doing those reviews, rather than somebody internally. That gives it a bit more credibility to it.

Kathryn Morgan:

Yeah, and it depends on the size of the business. But I think where you can use an external disclosure hotline or service, and there's heaps of them now, it's a burgeoning area for people. It's a really good way to deal with that because you can do it anonymously, I think people will often speak a bit more freely if they feel like they're removed from the situation. With that being said, I went to a talk, back when you could actually go to talks in-person. It was towards the end of last year and they were talking... I think that was a Transparency International one... and they were talking about whistleblowing.

Kathryn Morgan:

And quite interestingly, they said that with the external disclosure hotlines, more often than not, they call rather than email. And more often than not, after they've spoken to the person on the external hotline, they actually end up feeling quite empowered to go back to business and speak directly to them, so, they actually end up making more often than not, a non-anonymous disclosure inside the business, which I think is quite interesting as well, so.

Ainslie Cunningham:

That's not an expected response, is it?

Kathryn Morgan:

No, but it's not right for everyone. I think for ASX listed companies, or where you've got multiple geographical locations as well, that can be a better option. But obviously, if you're a small, tightly held business that is still a large proprietary company, it may not be necessary or appropriate. And then, for a lot of our financial services clients, that's the case. So, they're captured because either they're a large proprietary company, but they're this office of five people who manage investments and there's absolutely no need to have a separate hotline for that.

Deb Anderson:

So, coming back to financial services and the Royal commission. How are the implementations of the recommendations at the Hayne Royal commission progressing? Where are we at?

Kathryn Morgan:

Oh, well I think we would have got further if, again, not for COVID like everything else this year, but we're starting to see some of the changes coming through. The product intervention power is through now, and we're starting to see ASIC flex their muscles a little bit on that, which is a really interesting space. The design and distribution obligations that were meant to have commenced have been pushed out a little bit as well, but we haven't seen too much more, coming out of the recommendations that will eventually be implemented yet. I think ASIC focused, despite last year being quite firm about their why not litigate approach, and they have brought that back a bit in light of COVID. And their main focus, it seems to me anyway, is just making sure that all the regulated entities are complying with the law as best they can, given the circumstances and giving a bit of flexibility around what that necessarily needs to look like. A big one for them has been liquidity for managed investment schemes or registered managed investment schemes, particularly given the economic impact of COVID.

Kathryn Morgan:

Back in 2007 and 2008 during the GFC. A lot of mortgage schemes and a lot of other registered schemes did become illiquid and made things very difficult for people to get their money out and otherwise collapsed, so I'm sure they don't really want to see a repeat of that. So, they've been sending lots of letters out that are going to say, "Hey, just remember your financial requirements," so that's been one space. But things are starting to pick up again, I think, as well. The other issue, as well as, a lot of ASIC offices are actually in regional Victoria, which has presented a new dimension for compliance as well. Someone in our team had to call ASIC the other day, and the call centre is also in regional Victoria and they have to face coverings. And so, there's this recorded message when you're on hold to ASIC's call going like, "By the way, all of our staff are required to wear face coverings. So, if you can't really hear them, maybe try sending us an email."

Deb Anderson:

Oh, that's interesting.

Ainslie Cunningham:

Yeah. How challenging for them.

Kathryn Morgan:

I know, but I could actually hear them fine, which was good. But it was just very surreal kind of.

Ainslie Cunningham:

Yes, that's weird, isn't it?

Kathryn Morgan:

So, I think, ASIC's cutting regulated entities a little bit of slack. We should probably be cutting ASIC a little bit of slack.

Deb Anderson:

Yeah, absolutely.

Ainslie Cunningham:

So in terms of, I guess, the practicalities for financial services clients, how are they finding the implementation of some of these changes and where can they go to, I guess, get some help in terms of implementing them?

Kathryn Morgan:

So, product intervention power, there's obviously nothing for them to do, that's more a power that ASIC has if they don't like or have to take issue with a particular product or service. It is a relatively high threshold, there has to be this significant risk of consumer detriment. So pretty much so far, they've only really stepped in on payday lenders that have really aggressive practices and as well as binary option trading apps, which I don't know, in my opinion is fair enough. They're not necessarily appropriate for the kind of people that they are targeting. With the design and distribution obligations that will be coming in next year now.

Kathryn Morgan:

But obviously, I'm very happy to have a chat with anyone who wants to know more about that. We'll probably be releasing some written guidance around what that's going to look like too and what you need to do. It's not really clear how it's going to work yet because it's very new, it's not really like anything we've done in Australia before and there's not really a comparable regime in any other countries as well. So, we'll have to wait and see on that one.

Ainslie Cunningham:

Australia will be the poster child for that, by the looks of it.

Kathryn Morgan:

Oh, we do love regulations here, I'll tell you what.

Deb Anderson:

There's something with financial services, there's so much regulation, and now, modern slavery is going to impact some of those larger companies as well. So, it's just layers and layers, isn't it?

Kathryn Morgan:

Yeah. Although, I think trying to convince professional firms of the importance of modern slavery is not an easy sell. They're like, "I work in an office, why do I need to think about this?" I think construction and mining have probably been the most receptive to it, because I think that they often have mines in other countries as well and they get it a lot more. But yeah, professional services firms are definitely not.

Deb Anderson:

Because I think I was looking at some stats and I think it's like 69% of the modern slavery issues are out of Southeast Asia.

Kathryn Morgan:

Yeah. Yeah. And Australia doesn't have a lot actually in Australia. I think like last year it was something like 2000 cases, which to be fair, is still a lot more than I thought would be the case, so a lot of offshoring issues are a big one. But if you buy merchandise, anything you buy that's from a vulnerable jurisdiction probably needs to be looked into.

Ainslie Cunningham:

Yeah, definitely. So, in terms of the bribery and corruption laws, have you seen a bit of a shift in companies adopting anti-bribery and anti-corruption policies that tie in with their whistleblower policy and codes of conduct?

Kathryn Morgan:

Not too much. I think ASX listed companies do tend to have one, because it's in the guidelines to have one they're probably not as robust as they need to be. It really depends if you are operating cross border, because most bribery and corruption policies do tend to relate more to the foreign bribery, but they should cover domestic issues as well, because that's also an offence. I think most people were more preoccupied with just getting a whistleblower policy in place rather than thinking about necessarily how it interacts with their existing policies or frameworks.

Kathryn Morgan:

But ideally, they should all talk to each other. I think as well, there were some proposed changes that were hopefully going to come through this year, which once again, pushed back, probably won't be this year now. So, I know there are a few businesses that were waiting for that to happen and then giving everything a big overhaul. But whether or not, it's appropriate to keep waiting on that, maybe not given, it could be a little while before they come through now.

Deb Anderson:

Yeah, absolutely. And just going back to the AML/CTF, are you finding that clients are doing annual reviews of those policies?

Kathryn Morgan:

Yeah, so you do have an annual compliance report that you're required to submit to ASIC in terms of actually reviewing your AML/CTF program. It's not necessary that you do it every year, maybe. But the big banks and other really big financial institutions probably should, but for most small to moderate sized financial services providers, every three or four years for a complete review of your program is usually sufficient. That being said, if your distribution channels or your products change, or even who you're targeting as clients change as well, you should probably look at making sure that your program is up to date and accurately reflects the amount of risk that you're taking on.

Kathryn Morgan:

A few clients have actually made some changes to their programs to reflect some of the changes to the KYC obligations in light of COVID. So, AUSTRAC basically said, "Look..." Normally, I'm very stringent, get certified copies of things. I'm having two forms of documentation and because of COVID and the fact that, that's often not possible to do that, they said, "... Look, if you need to get a photocopy and then get the original certified copy after this is all finished, or if you want to have a Zoom call with your client and they hold up their ID and say, 'look, it's me,' then under the circumstances, that's probably fine," which I think is quite interesting.

Kathryn Morgan:

And I actually hope it's something that will stick around even after the end of COVID, because I think as particularly as distribution channels move online a lot more, even for financial services, it's quite cumbersome. People have to send paper copies of things in and there's plenty of really effective digital ways to verify someone's identity now, so.

Ainslie Cunningham:

Yeah. Absolutely. And there's nothing more frustrating than when you finally do it, and send it off, and then you wait for a response, and then they say, "Oh, it never turned up." And you're like, "Oh, no."

Deb Anderson:

Or it wasn't properly certified. You didn't use the right wording.

Ainslie Cunningham:

Start all over again.

Kathryn Morgan:

Fortunately, that's never happened to me, which is a relief. Because as a lawyer, I'd be very concerned if I couldn't get my documents certified properly.

Ainslie Cunningham:

For sure. So, in terms of, I guess, the matters that relate to UNSC sanctions regimes and some of those integrity risks that apply to certain multinationals, what are you seeing happening in that space?

Kathryn Morgan:

It's a pretty niche area. So it's generally only going to crop up if you are operating in very high risk jurisdictions for which, sanctions have been applied, and it also relates to the kinds of goods or services that you could potentially be providing to people in those jurisdictions. So, it's definitely not things that I look at every day, which is probably a good thing that people aren't trying to do it every day. But it does come up occasionally and it's a very interesting space to work in from time to time. It's... Yeah, as a corporate lawyer in Brisbane, you just don't really think about some of those issues, or what could potentially be going on in the Congo, or having to download the list from DFAT, or the names and passport numbers of international criminals. But yeah, not a lot moving in that space, it's just something that you have to be aware of, I guess if you're working in the AML/CTF space as well from time to time.

Ainslie Cunningham:

Absolutely.

Deb Anderson:

Those DFAT lists are always interesting to read, aren't they?

Kathryn Morgan:

Yeah, just a whole other world. And I guess if anyone who is regulated and anyone from that list ever crops up on your customer base, probably be a little bit concerned.

Deb Anderson:

Exactly. So, in terms of white-collar crime, what challenges you're dealing with at the moment?

Kathryn Morgan:

I don't work on the litigation side; our litigation team actually deals with that for us. But I guess I fit into the more of the front-end compliance space, so before litigation is required and hopefully never required. But I think in that space, the big ones at the moment is around whistleblower protection and AML/CTF. AUSTRAC have bigger teeth these days, particularly post all the litigation going on the banks as well, it's the first significant, other than the Tabcorp case, to really come out of the legislation in Australia, so they're are two big spaces that we're seeing a lot of movement and activity. And I think as well, the last six months with a lot of people working from home and having a bit more time on their hands, we are starting to see those compliance overhauls, where people are sitting down and going, "Okay, do our internal policies and procedures actually work for our business? Do they cover what we're doing? Are we going to get in trouble for some of the things we're doing and how can we be compliant going forward?"

Kathryn Morgan:

As well as I guess, where they do these reviews and realise that there are significant issues with their compliance frameworks, and potentially, the kind of things where they might actually need to let their various regulators know that they're perhaps not complying and set out a framework for how they can help by going forward. So, I've got a couple of matters at the moment where it's been writing... Sorry, regulator is effectively going, "This is what we might like. We've done this review; these are the five issues that we've identified and they're the reasons we haven't been complying. This is how we propose to fix it. This is what we're going to do going forward." And more of, depending on the circumstances that can often be enough, I think people are afraid of regulators and that's fair enough. But quite often, if you can engage early and give them a framework of what you're going to do to fix the issues, they can be quite receptive to them.

Deb Anderson:

They need to be proactive.

Kathryn Morgan:

Totally. Better than getting caught and then going, "Oh yeah, that thing."

Ainslie Cunningham:

Yeah, absolutely. And I think having that open, honest, trusted relationship with your regulator on a regular basis is proving more a model going forward.

Kathryn Morgan:

Yeah. They are enforcement, but they are also oversight and supervision and they're there to help you as much as they are to get the big stick out if it needs to come out.

Ainslie Cunningham:

Yeah, absolutely, and I think too, a lot of the challenges for large insurance firms and banks has been... There's so many changes to regulation over time, a lot of APRA requirements, a lot of the BEAR regime stuff, the Basel II standards, all of those types of things and the Royal commission. And each time that these things happen, they just filled a gap with a siloed approach. And then, more often than not, a lot of those frameworks are not cohesive throughout the organisation.

Kathryn Morgan:

Absolutely. Yeah. And that was Hayne's big message in the Royal commission. He's like, "We don't need more laws. We just need laws that people can actually comply with." Even to get a financial services licence in Australia, there's no way you can go that will tell you what license you need. Unless you want to sit and read through three several hundred page regulatory guides, get out your corporations act, get out your

corporations' regulations and try and figure it out, and then it's actually not in the law and it's not really clear. So, we often do advices for people going, "Well..." And it takes us often a couple of days to figure it out - going "... Well, this is what license you need, and these are what authorisations you're going to need. And here's an 11-page document on all the things that you're going to have to comply with." And then, people wonder why FinTech is not taking off as quickly as it should in Australia, that's pretty much it.

Ainslie Cunningham:

And have you found that there's probably potentially a consolidation in that space, like a lot of the one and two men band AFSL's out there that might realise that regulatory compliance is just becoming so cumbersome and expensive, that they just can't keep up with all of the changes?

Kathryn Morgan:

It depends on what they have a licence for. We've definitely seen some of the smaller providers pull out of the market, as well as smaller foreign providers pull out of the market off the back of the new, so much new now, with the industry funding model. So, for a financial services provider, your funding comes down to what authorisations you have on your licence. And some of them are flat levies of a few thousand dollars and some of them will be graduated. But with some of the flat levies, they are quite hefty and for some of these businesses, and they've got this license, and they're not really positively trading, it's just the actual cost of having their license is too much, they can't afford it. So, they pull out at the market.

Ainslie Cunningham:

Absolutely. Well, I think that's about all we have time for today, Kathryn. So, before we leave, do you have anything that you want to leave our listeners with, sort of the top three tips as a financial services lawyer?

Kathryn Morgan:

I'll try and keep it broad, but I suppose if you've got a bit of extra time for COVID, now is the time to look at your compliance frameworks, figure out what works for you, what doesn't work for you, what you're missing. And if you are missing anything, definitely look at putting something in place, especially a whistleblower policy. Check out Anti-Slavery Australia. I think it's a really interesting resource and I would definitely encourage people, even if they aren't required to report, they might actually want to put a framework in place anyway, because it's good governance and it's a good thing to do.

Ainslie Cunningham:

Well, thank you so much, Kathryn for joining us today.

Deb Anderson:

Thanks Kathryn.

Kathryn Morgan:

Thanks guys.

Outro:

That's all for today. Until next time, happy podcasting. And remember if you're enjoying the show, check out our other episodes and all things governance at www.3ysowls.com.au.