Climate Risk Disclosure

Regulating the Energy Transition: Issues at the Intersection of Energy and Environmental Law, Oxford, 30 June-1 July 2016

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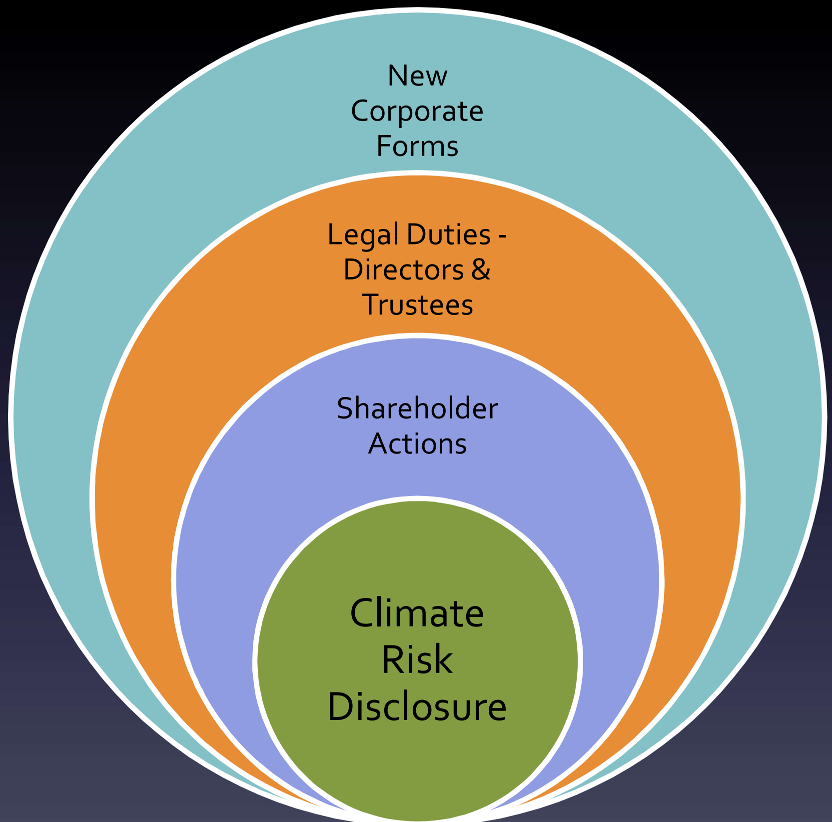
International drivers

- Crucial private sector role in energy transition
- Business momentum for energy transition built by Paris
- Growing pressure on laggards e.g. Exxon

Corporate and Investment Law – tools to drive clean energy transition



Peel, Osofsky & McDonnell, ARC Discovery Project – DP 160100225, 'Developing a Legal Blueprint for Corporate Energy Transition' (2016 – 2018)

Climate Risk Disclosure: driving change?

- Information to decision-makers (investors) > change market behaviour
- Prompt internal risk management / opportunities
- Safeguard broader economic stability

http://www.forbes.com/sites/mikescott/2015/12/04/bloomberg-to-head-climate-risk-taskforce-to-bring-greater-transparency-for-investors/#3705b7982cab

What are the business risks?

Physical	**Non-Physical (*Carbon / Transition Risks*)**
• Acute Weather Events • Longer term changes to rainfall, temperature and other factors	• *Legal/policy* – compliance costs and liabilities • *Technology* – existing tech. investments written off, new investments & operational changes • *Market/economic* – viability of business model? • *Reputational*
Leading to… disruptions to operations, transportation, supply chains; damage to physical assets; and reduced resource availability.	*Leading to…. lost revenue, reduced value of operating assets and investments, 'stranded' assets, reduced value of companies and securities.*

International Developments

Voluntary Self-Reporting

- Civil society and investors - e.g. CDP
- Impact: investor coalitions using this information (*Carbon Asset Risk Initiative, Carbon Action Initiative*)

Mainstream Financial Reporting

- US SEC Guidance – 2010 > Exxon, Peabody – misleading disclosure

Mandatory National Schemes

- e.g. France 2015: *Energy & Ecology Transition Law* – companies and investors -disclose carbon exposure + targets for divestment & clean energy investment

Australia?

- High exposure throughout economy – physical & non-physical risks
- Corporations Law
  – Mainstream reporting – sim. to UK and US + penalties for misleading disclosure
  – Likely to capture many Aust. companies
  – BUT no regulatory guidance or specific provisions

What happens in practice?

- Varied level of reporting
- Less detail than expected
- Little detail in mainstream financial reports, more in other publications

Suggests:

- not perceived as a material business risk in the timeframes adopted and/or
- lack of explicit requirements, guidance & regulatory scrutiny leading to poor practice

http://www.smh.com.au/business/glencore-tax-bill-on-15b-income-zip-zilch-zero-20140626-3awgo.html

Reform?

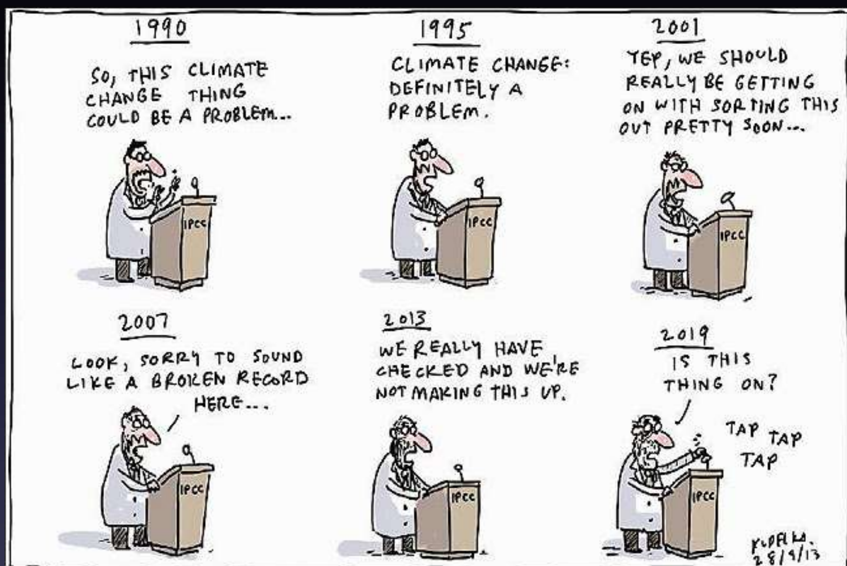
***Minimum*: Regulatory Guide - timeframes, sector specific risks & consistent metrics AND compliance (*US model* ++)

***Workable*: Expand scope of existing emissions reporting (*financed emissions, lower thresholds, overseas operations, scope 3, require targets?)* AND link to corporate reporting (*UK model* ++)

***Optimal*: comprehensive energy transition legislation with targets for emissions reduction and clean energy uptake, and linked reporting/disclosure for broad range of companies & investors (*French model*)

http://reneweconomy.com.au/2016/australia-senate-to-launch-inquiry-into-carbon-risk-71138

Comments and questions



http://www.cdsb.net/blog/policy/382/what-next-climate-change-policy

- Definition of inadequate disclosure: "a person who warned his hiking companion to walk slowly because there might be a ditch ahead when he knows with near certainty that the Grand Canyon lies one foot away."
- *In re Harman Int'l Industries Inc Sec Litigation (2015)*, Rogers J