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

Climate Risk Disclosure: driving change?

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

## What are the business risks?

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<tr>
<th>Physical</th>
<th>Non-Physical (Carbon / Transition Risks)</th>
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<td>• Acute Weather Events</td>
<td>• <strong>Legal/policy</strong> – compliance costs and liabilities</td>
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<td>• Longer term changes to rainfall, temperature and other factors</td>
<td>• <strong>Technology</strong> – existing tech. investments written off, new investments &amp; operational changes</td>
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*Leading to... disruptions to operations, transportation, supply chains; damage to physical assets; and reduced resource availability.*

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<td><strong>Market/economic</strong> – viability of business model?</td>
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<td><strong>Reputational</strong></td>
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*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

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

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)

Comments and questions

- 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