Implementing the Paris Agreement: The Role of Business

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Outline

1. Conventional approach: corporations as a *barrier* to climate action
   – Lawsuits against “carbon majors”
2. Paris Agreement – unprecedented business involvement in negotiations
3. Corporations as agent for achieving safe climate future?
   – Corp and securities law as a source of tools for promoting clean energy business practices necessary to implement Paris goals
   – Challenges with this approach
Corporations – part of the problem or part of the solution?

• Conventional approach to view corporations as barrier to climate action
  – e.g. producers of/investors in fossil fuels, major emitters
  – corporate funded climate denial campaigns and lobbying

• Lawsuits seeking climate justice for “victims” of climate change have often targeted corporations, particularly those in the energy sector
  – Tortious and human rights claims pursued
Carbon major lawsuits
Paris negotiations – a new dynamic?

- Global business leaders offering support for international cooperation on climate change
- New business focused groups and coalitions
Investor coalitions

• E.g. Climate Action 100+
  – Established by five investor organisations in Paris at the One Planet Summit hosted by President Macron in Dec 2017
  – five-year project harnessing the weight and influence of global investors to engage the world’s largest greenhouse gas emitting companies on climate action
  – 280 investors with over US$30 trillion in assets under management
## Corporate climate action motivated by financial risk

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<thead>
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<th>Physical</th>
<th>Transition</th>
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<td>• Acute risks – event driven eg greater occurrence of severe weather events</td>
<td>• <em>Legal/policy</em> – compliance costs and potential litigation</td>
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<td>• Chronic risks - longer term shifts in climate patterns eg changes to rainfall, temperature and other factors</td>
<td>• <em>Technology</em> – existing tech. investments written off, new investments &amp; operational changes</td>
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<td><em>Leading to disruptions to operations, transportation, supply chains; damage to physical assets; and reduced resource availability.</em></td>
<td>• <em>Market/economic</em> – viability of business model?</td>
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<td>• <em>Reputational</em></td>
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<td><em>Leading to lost revenue, reduced value of operating assets and investments, ‘stranded’ assets, reduced co. value</em></td>
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Recommendations of the TCFD

• Emerging best-practice international standards
• Core recommendations:
  – Disclosure of climate risks in mainstream financial reports
  – Include scenario analysis including 2 degrees C or lower temperature goal
Corporate and securities law tools

- Requirements for corporate disclosure of material financial risks to business
- Engagement with shareholders and investors including through shareholder resolutions
- Enforcement of directors’ duties/liability for failure to fulfill obligations
• Climate risks capable of posing foreseeable risks of harm to Aus co interests
• Risks relevant to Directors’ duties of care and due diligence to extent that intersect with co. interests
• Company directors can and in some cases should be considering impact of climate change on business
• Conceivable that if failure to consider climate business risks could be found liable of breach of directors’ duties under corporations law
• “It is likely to be only a matter of time before we see litigation against a director who has failed to perceive, disclose or take steps in relation to a foreseeable climate-related risk that can be demonstrated to have caused harm to the company (including, perhaps, reputational harm)’’
Liability for inadequate disclosure

Peabody Coal

- Understatement of impacts of climate risk for business
- Claimed inability to predict financial impacts of future climate policy
- Misuse of IEA data about fossil fuel demand

Exxon Mobil

- Investigations by AGs in California and New York
- SEC investigation
- Shareholder class action lawsuit

CBA Lawsuit

- CBA shareholders sued CBA arguing CC poses material financial risks to bank’s business that should have been disclosed to investors
- Proceedings discontinued after subsequent CBA annual report acknowledged climate as material financial risk and promised to undertake climate scenario analysis of business
- Bank ruled out lending to Adani Carmichael mine
Could companies drive change?

- Highly variable practices – leaders and laggards
- Growing attention from regulators but appetite for law reform unclear
- Investor engagement as a driver
- Regulatory uncertainty continues to be cited as barrier to acceleration of clean energy strategies
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