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

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

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

Noel Hutley SC opinion, Oct 2016

- 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

http://www.smh.com.au/environment/climate-change/ailing-coal-giant-peabody-reaches-settlement-over-misleading-climate-comments-20151109-gkusyh.html

- 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

https://theconversation.com/should-oil-companies-like-exxon-be-forced-to-disclose-climate-change-risks-66961

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

Q&A

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