Disclosing and Managing Physical Risks – a new driver for private sector adaptation?

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• New framing of climate change as a material financial risk for business & investors
• How does this enliven obligations within company & securities law to disclose and manage these risks?
• Are these legal tools driving corporate energy transition?
• How are investors & civil society using these tools to pressure companies to transition away from heavy reliance on fossil fuels & to adopt clean energy practices?
Outline

• Climate change risks for business – *physical* & transition
• Legal obligations to disclose & manage these risks
• Investor pressure through engagement, shareholder resolutions
• Potential to drive & hasten uptake of adaptation measures by business?
Since 2015...
What are the risks (& opportunities)?

<table>
<thead>
<tr>
<th>Physical</th>
<th>Transition</th>
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<td>• Acute risks – event driven, e.g. 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, e.g. 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>Leading to disruptions to operations, transportation, supply chains; damage to physical assets; and reduced resource availability.</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>Leading to lost revenue, reduced value of operating assets and investments, ‘stranded’ assets, reduced co. value</td>
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What does the law say?

Business risk disclosure – fundamental element of company & securities law – market transparency & efficiency – investors/shareholders & other market participants depend on this information.

**Publicly listed companies** must disclosure *material* risks to their business in financial statements and accompanying commentary (annual reports, prospectus, other disclosure). Directors sign off on financial statements & reports as providing *true & fair* representation of company affairs.

*Materiality* – will this information influence the economic decisions of market stakeholders? Could the risk substantially impact on the company’s ability to create or preserve value for shareholders?
Under current law, many Australian companies – esp. resource, energy & finance sectors - would be obliged to report climate-related risks as part of mainstream financial reporting (financial statements & director’s report).

Additional - & of a distinctly different nature - to any reporting of greenhouse gas emissions under the National Greenhouse and Energy Reporting Act 2007.


• Noel Hutley SC and Sebastian Hartford-Davis, Climate Change and Director’s Duties: Memorandum of Opinion (7 October 2016).
Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017)

- Disclose in mainstream financial reports
- Scenario analysis (including 2°C or lower temperature goal)
- Applies to operating companies AND financial-sector organizations, including banks, insurance companies, asset managers, and asset owners
Investor pressure

- Institutional Investors – Superfunds, esp. industry funds (e.g. Local Government Super, HESTA, AustralianSuper)
- Representative bodies & service providers – ACSI
- Civil Society – Australasian Centre for Corporate Responsibility, Market Forces
- Engagement & Shareholder resolutions
  - Better climate risk disclosure (TCFD) & management
  - Transparency around industry association membership
3 May 2018, Shareholder Resolution

- Market Forces & Local Government Super
- Seeking TCFD compliant disclosure
- Sub-standard disclosure
- Physical Risks - significant & increasing shareholder losses from extreme events > concern about basic business model
  - 2017: Hurricanes Harvey, Irma and Maria (Americas); Californian wildfires, Tropical Cyclone Debbie (Australia) > highest level of insured catastrophe losses on record
- & transition risks – underwriting fossil fuel projects
- Resolution not legally valid (advisory resolutions not currently permitted) BUT strong showing of shareholder support (18+%)
• Australian context: more traction on transition risks; physical risks seen as too uncertain? too long term? (political context / climate scepticism)

• Building momentum - recognition of climate change as business risk & legal requirements to disclose

• Pressure building from external stakeholders (investors, regulators, civil society) – note US litigation trends

• Best practice developing – TCFD – including physical risks

• Risk internalisation, changed behaviour?
  • internal > shifting capital, R&D etc to clean energy + adaptation / resilience
  • external > engagement, investment screening, divestment
More Information:


• Anita Foerster and Jacqueline Peel, ‘Rio Tinto’s climate change resolution marks a significant shift in investor culture’ *The Conversation* (3 May 2018).

• Anita Foerster and Jacqueline Peel, ‘Climate Change is a financial risk, according to a lawsuit against the CBA’ *The Conversation* (16 August 2017).

• Anita Foerster and Jacqueline Peel, ‘Carbon Risk Disclosure: The risk for Australian companies’ *Pursuit* (29 August 2016).