



## Outline of presentation

1. Climate risk and corporate disclosure obligations
2. Overseas developments: investigations and complaints of misleading disclosures by fossil fuel companies in the US
3. Prospects for actions against Australian companies

## 1A. Climate risk

Physical	Non-Physical
<ul style="list-style-type: none"> <li>• Acute Weather Events</li> <li>• Longer term changes to rainfall, temperature and other factors</li> </ul> <p><i>Leading to disruptions to operations, transportation, supply chains; damage to physical assets; and reduced resource availability.</i></p>	<ul style="list-style-type: none"> <li>• <i>Legal/policy</i> – compliance costs and liabilities</li> <li>• <i>Technology</i> – existing tech. investments written off, new investments &amp; operational changes</li> <li>• <i>Market/economic</i> – viability of business model?</li> <li>• <i>Reputational</i></li> </ul> <p><i>Leading to lost revenue, reduced value of operating assets and investments, 'stranded' assets, reduced Co. value</i></p>

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## What must companies disclose?

- Key requirements:
  - Annual report disclosures
    - directors' report – s 299A(1)
    - financial statements (role of auditors)
  - Directors duties: s 180 CL
- Key issues: materiality and foreseeability of risk
  - Unlike US no specific regulatory guidance on climate risk disclosure



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## 2. Overseas developments

### Peabody Coal



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

### Exxon Mobil



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

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## 3A. Australian companies and climate risk disclosure

- Highly variable reporting practices of Australian companies on climate risk
- Legal opinion for CPD and Future Business Council provided by Noel Hutley QC – litigation against director for non-disclosure of foreseeable climate risk 'only a matter of time'



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## 3B. Lawsuits against Aus companies?

- Possible but not high likelihood currently
- Business culture and climate regulatory landscape rapidly shifting
- Proper disclosure of climate risk will reduce potential liability; 'little downside and much potential upside': Noel Hutley QC



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

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## Questions?

- Research funding from ARC, DP160100225, *Devising a Legal Blueprint for Corporate Energy Transition* (Peel, Osofsky and McDonnell)

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