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Sustainable Investment Issues

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Contents

Mandatory Climate Related Reporting

Sustainability Reporting

- Legislation passed in late 2024
- Phased in commencement dates:
  - Large Entities (Rev >AU$500 million; FTE >500) FY 2025/26
  - Medium Entities (Rev >AU$200 million; FTE >250) FY 2026/27
  - Asset Owners (AU$5 billion FUM) FY 2026/27
  - Smaller Entities (Rev >AU$50 million; FTE >100) FY 2027/28
- Sustainability Reporting subject to same obligations as apply to Financial Reporting:
  - Reasonable basis
  - Directors responsible for contents

Sustainability Reporting Cont.

- Contents of Report:
  - Governance processes
  - Approach to management of climate risk and opportunities
  - Emissions (Scope 1, 2 and 3)
  - Financial effects of climate risks and opportunities
  - Matrix and targets, including progress towards targets

Sustainability Reporting Cont.

- Limited Immunity
- Audit Assurance
- Phasing in of Scope 3 emissions in second year of reporting

Sustainability Reporting Cont.

- ASIC released draft Guidance in November 2024:
  - Proposed enforcement approach
  - Scope of director’s ability to rely on third parties
  - Scope of director’s obligations to establish operational systems and keep records
  - Basis of making statements on risk and forward-looking statements
  - Limited immunities for voluntary Sustainability Reporting

US Developments and International Considerations

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US Developments: Deceleration and Fragmentation

- New administration undoing explicit and tacit support for ESG initiatives, especially with respect to climate risk and diversity, equity and inclusion (DEI) initiatives
- SEC Climate Risk Disclosure Rule on its way to the recycling bin; SEC Funds Disclosure Rule won't even get there
- Third Party initiatives (CA100+; NZAM; NZBA) are under intense scrutiny;
- States continue their own initiatives:
  - "Red State" Anti-ESG legislation, litigation and investigations;
  - But see: Pro-ESG legislation (e.g., CA climate disclosure rules);
- Expect less US cooperation (and acquiescence) to international climate rules

Greenwashing and Enforcement

ASIC Intervention

Interventions related to:

- Underlying investments that are inconsistent with disclosed ESG investment screens and investment policies
- Sustainability-related claims made without reasonable grounds
- Insufficient disclosure on the scope of ESG investment screens and investment methodologies
- Sustainability-related claims made without sufficient detail

Resulting in…

- 60 corrective disclosure outcomes
- 19 infringement notices issued
- AU$270,360 of infringement notices paid
- Three civil penalty proceedings
- AU$24.2 million in civil penalties imposed

What's Ahead?

- ASIC enforcement priorities for 2025
- Political landscape
- U.K. and Europe:
  - UK SDR regime
  - ESMA fund naming rules
- U.S.

> *Can sustainable investing survive Trump 2.0?.*
>
> *AFR, 19 January 2025*

Product Labelling

Product Labelling

- Treasury ‘Sustainable Finance Roadmap’ June 2024:
  - Public consultation in early 2025
  - Regime to commence in 2027

- Industry consultation (FSC):
  - Assumes legislative framework
  - Suggests alignment with existing frameworks used by industry

- RIAA Sustainability Classifications: “Responsible”, “Sustainable” and “Sustainable Plus”

Regulation of Trading in and the use of Carbon Credits

What are they?

- Australian carbon credit units (ACCUs) and safeguard mechanism credit units (SMCs) are financial products under the *Corporations Act 2001 (Cth)*
- an ACCU represents one tonne of carbon dioxide equivalent (tCO_2-e) emissions that are avoided or sequestered by an eligible offsets project
- the Clean Energy Regulator is responsible for administering the ACCU Scheme and issuing ACCUs and SMCs

Regulatory Framework

Corporations Act 2001 (Cth)

Do you need an AFS Licence?

If you provide a financial service in relation to either ACCUs or other certain types of emission units, you may require an Australian financial services (AFS) licence

Safeguard Mechanism Reforms

The Safeguard Mechanism reforms set out legislated targets, known as baselines, for certain designated large facilities operating across mining, oil and gas production, transport and electricity

Climate-related Financial Disclosures

Reporting entities will be required to disclose the quantitative and qualitative climate-related targets, which disclose the planned use of carbon credits to offset greenhouse gas emissions

Carbon Exchange

To facilitate trading in ACCUs, the Clean Energy Regulator is in the process of developing the Australian Carbon Exchange

Sustainable Investment Taxonomy

Sustainable Investment Taxonomy

- Development of Taxonomy continued in 2024
- Designed to provide common definitions for sustainable economic activity in Australia
- Priority sectors are electricity generation and supply, minerals mining and metals and construction and built environment
- Interaction with fully implemented climate related reporting regime unclear
- Further consultation continuing

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