SEPTEMBER 2024 ESG POLICY UPDATE– AUSTRALIA

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Australia Environmental Social Governance (ESG) Alert

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AUSTRALIAN UPDATE

Climate-Related Disclosures Legislation Passed

The *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024* (Cth) passed Parliament on 9 September 2024 and received Royal Assent on 17 September 2024 (CRFD Act) The CRFD Act introduces, through amendments to the Corporations Act 2001 and related legislation, new mandatory climate-related disclosure requirements for large entities and financial institutions.

See here for details regarding the CRFD Act.

Australia's largest corporations and financial institutions (Group 1, roughly equivalent to the ASX 200) will be the first to disclose under the new laws, in respect of financial years from 1 January 2025, with phased implementation for other organisations over the following two years.

Australian Securities & Investments Commission (ASIC) Commissioner Kate O'Rourke has urged reporting entities to proactively engage with these mandatory climate reporting requirements, stating '[l]arge businesses and financial institutions should ensure that they implement appropriate governance arrangements and sustainability record-keeping processes ahead of the mandatory climate reporting requirements taking effect from 1 January 2025'.

Next Steps and Resources

To assist reporting entities, ASIC has established a dedicated sustainability reporting page on the ASIC website to provide information about the new regime and how ASIC will administer it. We encourage reporting entities to refer to this page as an ongoing resource as it will be updated with further information and regulatory guidance.

The Climate Governance Initiative Australia, a multi partner collaboration hosted by the Australian Institute of Company Directors, has also released a Version 2 of its director's guide to mandatory climate reporting, which contains an overview of the reporting framework, key director responsibilities and suggested steps for boards to take.

K&L Gates is also here to assist. Directors of reporting entities should seek appropriate advice and take action to set up the governance, strategy, systems and processes required to make these mandatory disclosures. Failure to do so in a timely manner may expose directors and reporting entities to adverse market and regulator scrutiny in addition to potential liability.

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ASIC 'Wrapped' – Interventions on Greenwashing Misconduct 2023-2024

On 23 August 2024 ASIC published a report entitled 'ASIC's interventions on greenwashing misconduct 2023-2024 (Report).

The Report outlines ASIC's regulatory interventions made between 1 April 2023 and 30 June 2024 in relation to concerns about greenwashing claims. The Report also summarises findings, key recommendations and good practice examples identified from ASIC's greenwashing surveillance activities during this time.

The Report outlines that ASIC has made 47 regulatory interventions to address greenwashing misconduct, including the commencement of two Federal Court proceedings (previously reported on by K&L Gates here and here).

ASIC's regulatory interventions related to:

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

The Report encourages product issuers and company directors to improve the quality of sustainability-related disclosures. Sustainability-related information should be based on reasonable grounds, use language that ensures sufficient understanding by investors, and be accurate and data-driven. Examples from ASIC's surveillance activities include:

- When disclosing climate-related metrics and targets voluntarily, listed companies should consider the relevant disclosure requirements set out in the Australian Sustainability Reporting Standards;
- Superannuation trustees and responsible entities should provide adequate explanations of investment exclusions or screening criteria; and
- Ambiguity should be avoided in regard to carbon markets and sustainability bonds when disclosing potential use of proceeds to be raised under a green bond and disclosure should align with any current intended use of proceeds.

ASIC's 2024-2025 Corporate Plan

On 22 August 2024, ASIC released its Corporate Plan for 2024-2025 (Corporate Plan). The Corporate Plan includes a new pillar in its strategic priorities relating to driving consistency and transparency across markets and products. ASIC's key activities in relation to this priority comprise:

- Reviewing the growth in private markets and its implications for the integrity and efficiency of public markets.
- Supervising the conduct of financial market infrastructure providers and reporting on market cleanliness.
- Creating a central coordination function to monitor digital assets, tokenisation and decentralised finance.
- Implementing various rules in relation to trade reporting, and clearing and settlement service.

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- Monitoring financial reporting and audit firms through surveillance of financial reports of listed and unlisted entities of public interest.

ASIC Chair Joe Longo said:

> *'While the overarching themes of our existing strategic priorities remain consistent, our updated Corporate Plan demonstrate how we are evolving and adapting to the changing needs of our operating environment'.*

ASIC will also continue addressing financial system climate change risk as one of its strategic priorities. The Corporate Plan outlines that the key activities in relation to this priority will include:

- Supporting the introduction of mandatory climate-related disclosures by establishing a new team to develop regulatory guidance, assess applications for relief, and supervise compliance;
- Deterring greenwashing and sustainable finance misconduct by undertaking surveillance activity and taking enforcement action;
- Supporting sustainability and energy transition through effective licensing and supervision, and updating regulatory policies relating to carbon-related financial products; and
- Examining how insurers are responding to customers in the context of climate change.

Australian Government Releases Response to 2023 Review of Australian Carbon Credit Unit Scheme

The Australian Government has released its response to the 2023 Climate Change Authority (CCA) review of the Australian Carbon Credit Unit Scheme (ACCU Scheme).

Since 2011, the ACCU Scheme (established by the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth)) has supported projects that avoid the release of greenhouse gas emissions or remove and sequester carbon from the atmosphere. The review determined that the ACCU Scheme was performing well and successfully supported Australia's net zero transformation.

The CCA made 15 recommendations, focusing on further enhancements to the ACCU Scheme's transparency, strengthening method review processes, increasing scheme participation for First Nations people and rural, regional and remote communities and aligning with global carbon market developments where it is in Australia's national interest.

In response:

- Where the recommendation would enhance the ACCU Scheme and could be feasibly implemented within existing resources, the Government has agreed to the recommendation; and
- Where the recommendation would enhance the ACCU Scheme but further consideration is required on implementation, resourcing and prioritisation, the government has agreed-in-principle.

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Overall, the Government has agreed to three of the recommendations and agreed in principle to the remaining 12, with most recommendations overlapping with the existing ACCU Scheme reforms already being implemented or under development (see K&L Gates' alert on the ACCU Scheme regulatory framework here).

The response has been considered in the context of the Government's broader plan to address the climate crisis, including the ACCU Scheme reforms, its legislated emissions reduction targets, the 'Powering Australia' plan to reduce emissions and enhance sequestration across all sectors of the economy, and the 'Future Made in Australia' plan to build an economy powered by clean energy.

See here to read the full response.

VIEW FROM ABROAD

Global Investors Push for Stronger Climate Policies Ahead of COP29

Ahead of the 2024 United Nations Climate Change Conference (COP29) and in the most comprehensive statement to date, investors and financial institutions are calling for policies that will accelerate the transition to net-zero and a climate-resilient economy.

The 2024 Global Investor Statement to Governments on the Climate Crisis, released on 17 September 2024 (Statement) encourages investors across the world to support the global call for government action. It has already been signed by 534 financial institutions and their representatives, with more than US$29 trillion in assets under management.

The Statement calls for the enactment of policies across five critical policy groupings:

- Enacting economy-wide public policies;
- Implementing sectoral strategies, especially in high-emitting sectors;
- Addressing nature, water and biodiversity-related challenges contributing to and stemming from the climate crisis;
- Mandating climate-related disclosures across the financial system; and
- Facilitating further private investment into climate mitigation, resilience and adaptation activities in emerging markets and developing economies.

The Statement will remain open until 1st November, ahead of COP29 in Baku, Azerbaijan, where it will be presented to governments with the final list of signatures.

85% of Financial Institutions Leverage ESG Ratings According to CDP Report

ESG ratings and data products have become essential tools for financial institutions in their assessment of portfolio performance and environmental impacts.

A recent report released in August 2024 by the Carbon Disclosure Project (CDP) (Report) noted that in 2023, 85% of financial institutions disclosed climate-related opportunities with potential financial or strategic impacts, with AU$4 trillion in combined assets attributing improved ESG ratings as a significant driver of financial gains.

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Amid the global push for regulatory alignment, the growing demand for such tools has led to increased scrutiny and regulation. CDP's director of policy and external affairs, Pietro Bertazzi, noted that:

> "It's absolutely pivotal that the right checks and balances are in place to address this risk wherever possible and ensure capital allocation is efficient and impactful to achieve the goals of global environmental agendas."

As ESG ratings become more important in decision making, global regulators such as the International Organization of Securities Commissions (IOSCO) are implementing policies and providing frameworks to ensure reliability and transparency across ESG data products globally. Key regulatory initiatives include:

- IOSCO recommendations – Regulators should ensure oversight of ESG rating and data products, manage conflicts of interest, promote transparency, and develop industry standards.
- Global adoption and divergence – Jurisdictions should adopt IOSCO recommendations as closely as possible with little variation so that policies are interoperable across various jurisdictions.
- Standardised definitions – Different definitions of ESG ratings and data products across different jurisdictions have led to inconsistencies. Standardised definitions prevent confusion and enhance policy alignment.

Since IOSCO's 2021 report, various jurisdictions such as Japan, Singapore, India, Hong Kong, Japan, and the European Union have established frameworks or codes of conduct which govern ESG rating providers. However, for ESG ratings and data products to support sustainable finance effectively, regulations must be interoperable across borders. Additionally, aligning policies globally reduce compliance costs, improves transparency and foster a robust and unified ESG regulatory environment.

Access the full CDP Report here.

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