MARCH 2024 ESG POLICY UPDATE—AUSTRALIA

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Australia Corporate Alert

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AUSTRALIAN UPDATE

Australian Securities and Investments Commission Continues Greenwashing Enforcement Efforts

On 28 February 2024, the Australian Securities and Investments Commission (ASIC) reported that an outsourced responsible entity (RE) had paid an AU$13,320 infringement notice for misleading statements regarding the Bloom Climate Impact Fund (Bloom Fund).

ASIC alleged that the RE contravened section 12DF of the *Australian Securities and Investments Commission Act 2001* (Cth) in relation to disclosures by the Bloom Fund of which it was the trustee and RE. The Bloom Fund's product disclosure statement (PDS) described the Bloom Fund's negative screening process whereby the Bloom Fund would seek to avoid investment of its assets into certain excluded activities such as fossil fuels production. However, the PDS did not disclose that the negative screening process allowed investment into companies that derived up to 33% of revenue from an excluded activity.

ASIC alleged that the Bloom Fund consequently acquired and held a direct investment in an investee company which derived 16% of its revenue from fossil fuels in the 2022 financial year (FY). ASIC believes that the applied negative screening process and subsequent investment did not constitute “seeking to avoid investments” in the excluded activities and was as such misleading to the public.

This infringement notice is one of 17 issued by ASIC to date in relation to alleged Environmental, Social and Governance (ESG) misconduct.

Macquarie Continues to Invest in Women

Following the global celebration of International Women's Day, the Australian investment sector is promoting impact investing, with a particular focus on increasing female opportunities. The United Nation's 2024 theme “Invest in Women, Accelerate Progress” follows on from last year's determination that there is a US$360 billion annual investment deficit which is required to achieve gender parity by 2030.

The Macquarie Group Foundation (Macquarie) has partnered with Good Return Limited (Good Return) to support Good Return's Impact Investment Fund, which supports women-led small and medium-sized enterprises (SMEs) in emerging economies. Good Return's Impact Investment Fund represents that it has enabled access to AU$4.43 million in finance for more than 500 women-led SMEs. With 89% of loan recipients being women, this has created or sustained more than 3,400 jobs in the Asia-Pacific.

Macquarie, with its AU$20 million social impact investment allocation, has been deploying capital via philanthropic grant funding and social impact investment, with an investment size of AU$500,000 or above where there is an expected financial return in social impact projects that employ and upskill young adults.

Though there has been a focus on environmental impact investing by Australian financial institutions, gender lens investing presents evidence that making gender-smart sustainable investments could generate higher returns than investments that only take environmental sustainability into account.

Good Return is now preparing to launch its next gender lens investment fund.

Macquarie's director of social impact investment, Susan Clear, remains hopeful, stating that "when Australian financial institutions and the social sector work together, it fosters an environment to identify commercial investment opportunities that also have a positive social impact".

Australia and Canada to Co-Operate on Critical Minerals

Australia and Canada have agreed to work together to improve transparency in critical minerals supply chains and to promote recognition of strong ESG standards in critical minerals markets.

A joint statement published by the Minister for Resources and Northern Australia Madeleine King and Canada's Minister for Energy and Natural Resources Jonathan Wilkinson was published on 5 March 2024 (Joint Statement).

The Joint Statement notes that Australia and Canada both have national critical mineral strategies and are committed to ensuring critical minerals markets are "diverse, resilient, and guided by fair market practices".

As previously reported by K&L Gates, the Australian Government released its Critical Mineral Strategy 2023-2030 (CM Strategy) in July 2023. Under the CM Strategy, the Australian Government outlined its 2030 objectives which include that Australia realises the economic benefits of its critical minerals sector and becomes a significant producer of raw and processed critical minerals. Part of the CM Strategy is designed to achieve these objectives by creating diverse, resilient and sustainable supply chains through strong and secure international partnerships.

According to the Joint Statement, Australia and Canada have developed a nonlegally binding understanding to promote shared priorities related to global critical minerals extraction, processing, and refining. Canada's Department of Natural Resources and Australia's Critical Minerals Office, within the Department of Industry, Science and Resources, are to lead the work outlined in the Joint Statement and coordinate policies and investments to support the below shared priorities:

- Drive robust ESG efforts;
- Drive the development of critical minerals supply chain transparency and traceability to monetise the value proposition for responsibly sourced minerals;
- Ensuring that our common values are accurately reflected through multilateral fora to avoid overlap and ensure complementarity;
- Supporting bilateral mining and service sector trade and investment;
- Exploring joint research and development research exchanges and investment in strategic areas; and
- Continuing improving engagement with Indigenous Peoples.

Australasian Investor Relations Association Announces Revised ESG Engagement Recommendations for Listed Entities

On 19 February 2024, the Australasian Investor Relations Association (AIRA) released the second edition of its "ESG Engagement Guidelines: Recommended Practices for Australasian Listed Entities" (ESG Guide).

The new edition of the ESG Guide includes significant updates from the first edition, which was released in 2017. The updates are designed to reflect the evolving landscape of ESG considerations in corporate governance and investor relations.

Key updates to the ESG engagement recommendations include:

Enhanced Role of Investor Relations

Noting that investor relations are now positioned as the key contact point and coordinator for all ESG engagements with the investment community, ensuring preparedness and strategic alignment across all stakeholders.

Broader ESG Topics and Increased Complexity

A detailed understanding of the various parties involved in ESG-related topics, including asset owners, managers, regulators and ESG research providers.

Comprehensive Recommendations for ESG Engagement

A structured approach to ESG engagement, spanning governance resources, systematic strategy, feedback and review, and board mandate. The recommendations are designed to enhance transparency, strategic planning and stakeholder communication in ESG matters.

Identification and Understanding of ESG Stakeholders

A new focus is placed on identifying key ESG stakeholders and understanding their interrelationships. This includes insights into institutional investors, ESG research firms and sell-side research as well as providing a roadmap for effective stakeholder engagement.

THE VIEW FROM ABROAD

US Securities and Exchange Commission Adopts Rules for Climate-Related Disclosures

As previously reported by K&L Gates, the US Securities and Exchange Commission (SEC) adopted The Enhancement and Standardization of Climate-Related Disclosures for Investors final disclosure rules (Rules) on 6 March 2024. The Rules require US publicly traded companies to disclose climate-related information in their registration statements and annual reports. The Rules are significantly scaled back from the proposed rules that were issued on 21 March 2022.

These Rules come at a time when ESG initiatives and reporting have become extremely politicized in the United States. As previously reported by K&L Gates, this sentiment has even resulted in certain businesses making a conscious effort to avoid ESG references in their corporate reports. In response to critics that the SEC exceeded its authority in promulgating the Rules, SEC Chair Gary Gensler stated that "these final rules build on past requirements by mandating material climate risk disclosures by public companies and in public offerings. The rules will provide investors with consistent, comparable, and decision-useful information, and issuers with clear reporting requirements."

In summary, the core aspects of the Rules include the following:

Presentation of the Disclosures

The Rules require a company to:

- File its climate-related disclosures in its registration statements and annual reports filed with the SEC under the Securities Exchange Act of 1934;
- Provide the mandated climate-related disclosures either in a separate, appropriately captioned section of its registration statement or annual report or in another appropriate section of the filing, such as risk factors, description of business or management's discussion and analysis, or, alternatively, by incorporating such disclosure by reference from another SEC filing as long as the disclosure meets the electronic tagging requirements of the final rules; and
- Include additional disclosures in a note to its financial statements.

Content of Disclosures

The Rules will require a company to disclose, amongst others, the following:

- A description of the board's oversight of climate-related risks, including, if applicable, any board committee or subcommittee responsible for oversight of these risks and the process by which they informed about such risks;
- Climate-related risks that have had or are reasonably likely to have a material impact on the company, including on its business strategy, results of operations or financial condition;
- A description of any processes for identifying, assessing and managing material climate-related risks;
- Information about any climate-related targets or goals that have materially affected or are reasonably likely to materially affect its business, results of operations or financial condition;
- For larger US public companies, if material, Scope 1, and Scope 2 emissions, each expressed in the aggregate and on a gross basis excluding the impact of purchased or generated offsets; and
- In the notes to the financial statements, disaggregated financial information resulting from the impact of severe weather events and other natural conditions such as hurricanes, tornadoes, flooding, drought, wildfires, extreme temperatures and sea level rise.

It is intended the disclosures will be progressively phased in and compliance dates for the disclosures set out in the Rules are summarised here.

However, the Rules are already subject to a number of legal challenges from at least 25 states, energy companies and business advocates as well as from various environmental-focused groups. Nine lawsuits across six federal courts of appeal were consolidated in the Eighth Circuit Court of Appeals on 21 March 2024. Given these legal challenges, there is some uncertainty as to whether and when the Rules will go into effect.

Singapore to Introduce Mandatory Climate Reporting

Singapore will introduce mandatory climate reporting in a phased approach from 2025.

As outlined in the table below, all listed issuers must report annual climate-related disclosures in accordance with International Sustainability Standards Board (ISSB)-aligned standards (at the same time as lodgement of financial statements). Large nonlisted companies (defined as those with an annual revenue of over S$1 billion and total assets of over S$500 million) will be required to do the same from FY2027. Additional time will be provided for disclosure of Scope 3 greenhouse gas (GHG) emissions and for external assurance on reporting for Scope 1 and 2 GHG emissions.

Requirements	**Listed Issuers**	**Large Nonlisted Companies (unless exempted)** **Annual revenue ≥S$1B and total assets ≥S$500m**
Report ISSB-aligned disclosures, including Scope 1 and 2 GHG emissions	FY2025	FY2027
Disclose Scope 3 GHG emissions	FY2026	No earlier than FY2029
External limited assurance on Scope 1 and 2 GHG emissions	FY2027	FY2029

While the Singapore Exchange Regulation and the Accounting and Corporate Regulatory Authority (ACRA) have provided details of the disclosures to be made by listed issuers and large nonlisted companies, ACRA will review the disclosure experiences of listed issuers and large nonlisted companies before considering reporting requirements for other Singaporean companies.

Some of the noteworthy differences and similarities between the proposed Singaporean and Australian climate-related financial reporting regimes include:

Reporting Entities

In Singapore, it is currently only proposed that listed and large nonlisted companies be required to report (with a review proposed in 2027 to consider expanding the regime). The Australian regime is currently proposed to eventually apply more broadly to medium-sized nonlisted companies.

Commencement

The first phases under both regimes are proposed to commence in FY2025.

ISSB

Both regimes are based on the ISSB's S1 and S2 standards with certain amendments. Entities which are required to prepare climate-related financial reports under both Australian and Singaporean law will need to pay close attention to ensure that those reports are compliant under both regimes.

Deutsche Bank Updates Sustainable Finance Framework

Earlier this year, Deutsche Bank released its updated Sustainable Finance Framework (Framework), initially released in July 2020. This updated Framework outlines the bank's approach to classifying financial products as "sustainable", using strict environmental and social criteria. At the close of 2023, the bank facilitated €279 billion in sustainable financing and has since increased its target for sustainable financing and investment volumes from €200 billion to €500 billion by the end of 2025.

The Framework focuses on three key pillars:

- Refined eligibility criteria for environmentally and socially sustainable activities;
- Enhanced transparency for stakeholders in relation to progress towards its sustainability goals; and
- Credibility from a reputable rating agency and consultancy, and alignment with market practices and existing sustainability criteria.

To ensure clarity and consistency in Deutsche Bank's approach to sustainable finance, the Framework clearly defines the bank's classification of economic activities as environmentally sustainable based on the six guiding objectives of the European Commission's EU taxonomy for sustainable activities.

To access Deutsche Bank's updated Sustainable Finance Framework, click here.

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