To green or not to green?

Navigating 'greenwash' risks in climate change targets & sustainability credentials

Special insight

October 2021

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The ‘greenwashing’ conundrum

Put simply, **‘greenwashing’ is a misrepresentation of the sustainability credentials of a company, or of its products or services.**

Greenwashing is not a new source of legal and reputational risk for business. However, with the sharp evolution of sustainability (and climate change in particular) into a material financial issue, it has now become an acute source of legal risk for both commercial corporations and financial institutions.

With heightened demands on corporate sustainability from both investors and customers on the one hand, and elevated scrutiny from regulators and strategic litigants on the other, an ability to navigate the risks associated with ‘green’ claims has never been more important.

If greenwashing misrepresentations are made in annual reports or market filings, they may fall foul of the misleading disclosure provisions under Part 7 of the Corporations Act, or Part 2D of the ASIC Act. If they are made in trade or commerce, they may contravene the general prohibition on conduct that is misleading or deceptive (or likely to mislead or deceive) under section 18 of the Australian Consumer Law, or the specific prohibitions against misrepresentations in the supply of goods or services under Part 3.1 of that Law.

In this publication, we explore these trends, sharing insights from recent regulatory investigations and greenwashing litigation in Australia and globally. Woven throughout are practical steps to reduce legal and reputational exposures for companies and boards.

We show that setting targets, and promoting sustainability credentials is not a damned-if-you-do, damned-if-you-don’t situation. Businesses can, and increasingly must, develop ambitious and credible transition plans to reduce their emissions and environmental impacts. And they can do so in a way that minimises the risk of exposure to litigation, regulatory action, or reputational risks from consumer or civil society campaigns.

1 Common greenwashing risk one – emissions reduction targets

2 Common greenwashing risk two – ‘truth to label’

3 Common greenwashing risk three – green credentials in advertising

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Common greenwashing risks

Misleading or deceptive conduct

‘Greenwashing’ claims are increasingly common in three main contexts.

1

Greenhouse gas emissions reduction targets

Commercial corporations and financial institutions are scrambling to meet heightened market expectations on ‘net zero’ emissions by 2050, in line with the Paris Agreement goals. ‘Net zero’ also implies significant interim reductions over the short- and medium-term. Such targets may be misleading if they have no reasonable basis, there is no genuine intention to pursue them, or there are no credible efforts towards implementation.

2

‘Truth to label’

Companies and financial institutions alike are being held to tighter account in their use of terms such as ‘sustainable’ or ‘green’. These terms have moved from being amorphous (and thus broadly defensible) to imply a more defined – and much higher – standard of conduct.

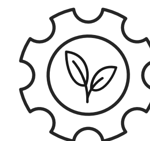
3

Advertising – corporate credentials or products

Consumer protection regulators are increasingly scrutinising greenwash in advertising campaigns.

We analyse each of these categories of claim below.

Common greenwashing risk one – emissions reduction targets



1 Climate change – emissions reduction targets

Commercial corporations and financial institutions are scrambling to meet heightened market expectations on 'net zero' emissions by 2050 in line with the Paris Agreement goals, with significant interim reductions over the short- and medium-term. Such targets may be misleading if they have no reasonable basis, there is no genuine intention to pursue them, or there are no credible efforts towards implementation.

Emissions reductions targets can be both a representation of present intention and a statement in relation to future matter. Liability for misrepresentations of future matters is subject to particular rules, including under section 769C of the *Corporations Act* and section 4 of the *Australian Consumer Law*.

Specifically, a representation of a future matter will be misleading or deceptive if, at the time the representation was made, the company making the statement did not have reasonable grounds for making it. Characterising a representation as regarding a future matter can be particularly onerous, as the defendant is presumed not to have had such reasonable grounds or intention, unless they can demonstrate otherwise. Important factors to defend against liability may include:

- the language in which a net zero target is expressed (and qualified),
- evidence of diligent interrogation of the grounds relied upon at the time the targets were set, and
- strategic progress towards the stated targets.

Recent claims illustrate a number of important principles to consider in setting – and implementing – emissions reduction targets.

Emissions targets – key pointers to avoid 'greenwash'

Targets may represent both a present intention, and a future matter. This means that, at the time the representation is made, a company must have both:

(a) a genuine intention to credibly pursue the stated objective; and

(b) a reasonable basis on which to ground their view that the targets,

in the manner in which they are communicated, may be achieved.

This does not mean that it is necessary to have a granular, complete roadmap of how targets will be achieved prior to making them public. But it speaks to the importance of clear, specific communication of any conditions or barriers to the achievement of that objective, and of how the company intends to progress towards the goal. (See *ACCR v Santos* and *Milieudefensie v Shell)*

Care must be taken in representing targets or emissions reduction trajectories are 'science-based' or Paris-aligned'.

It is prudent to avoid representing that emissions reduction targets or trajectories are 'Paris-aligned' or 'science-based' if they do not include a 45% reduction by 2030, across all scopes (1, 2 and 3). (See *Milieudefensie v Shell*)

Target setting is only the first step. Credible implementation is critical.

Activist shareholders have begun filing 'books and records' claims under section 247A(1) of the Corporations Act. They seek to access to company documents that demonstrate the implementation of its sustainability commitments. (See *Abrahams v CBA*)

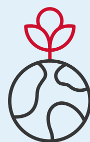
Language is important when communicating targets.

Companies should take care to avoid making absolute claims that imply certainty or control where there are material conditions that may impact on the ability to achieve a target (such as the development of new technology), without appropriately disclosing the relevant challenges. However, this does not mean that a company can solely rely on 'aspirational' language to defend the absence of a genuine intent or effort to pursue the target. Nor does it mean that a company can entirely condition its commitments on shifts in the broader economy. Rather, as a statement of present intention, targets should clearly communicate both the end objective and the manner in which a company itself intends to pursue that objective. (See *ACCR v Santos* and *Milieudefensie v Shell*).

Relevant caveats must be clearly stated alongside the targets that they purport to limit, and be given proportionate emphasis.

The *ACCR v Santos* and *Milieudefensie v Shell* cases highlight the potential dangers associated with reliance on future technological developments and/or actions of third parties, where these conditions have not been clearly articulated. This also points to the importance of diligence in evaluating the basis for, and strategic corollaries of, proposed targets.

Emissions reduction targets – recent cases



Milieudefensie et al v Royal Dutch Shell plc: A court opines on 'Paris-alignment'

In May 2021, a Dutch court found that Shell's failure to reduce emissions on a trajectory consistent with the Paris Agreement was a breach of its duty of care to, and human rights of, Dutch citizens. The court ordered it to increase its emissions reduction policy to 45% by 2030 across all scopes against a 2019 baseline. The court was critical of Shell's prevailing emissions reduction policy, finding that it was 'not concrete, has many caveats and is based on monitoring social developments rather than the company's own responsibility for achieving a CO2 reduction.' Shell has lodged an appeal against the decision.

The court incorporated into its assessment of the unwritten standard of care the IPCC science on what is required to meet the Paris temperature goals ('a universally endorsed and accepted standard to protect the common interest of preventing dangerous climate change'). In doing so, the court made three key steps in the analysis:

- the Paris goals are not just the parties' obligation to keep warming to well below 2°C, but also their agreement to take efforts to strive for 1.5°C;
- this requires steps to track the Intergovernmental Panel on Climate Change emissions reduction pathways that give a chance of limiting warming to 1.5°C, so a 45% reduction by 2030 pathway; and
- scope 3 emissions are relevant, especially where they are a majority of the corporate's emissions footprint.

Although the judgment does not create a legally binding precedent on Australian companies, it reflects a broad elevation of expectation on full value-chain net zero targets. It also demonstrates judicial preparedness to give short shrift to 'greenwash' or mis-alignment between corporate emissions reduction policies and strategic actions.

ACCR v Santos Ltd: Shareholder activists challenge veracity of emissions reduction targets

In August 2021, the Australasian Centre for Corporate Responsibility (ACCR) filed a Federal Court claim against Santos Ltd, alleging that Santos engaged in 'greenwashing' by 'embellishing its environmental credentials in a way that is misleading or deceptive, or likely to mislead or deceive' contrary to the *Corporations Act 2001* (Cth) and/or *Australian Consumer Law*, in certain statements in its 2020 Annual Report (published on 18 February 2021).

The claim alleges (in part) that Santos misrepresented that it had a 'clear and credible plan' to meet its emissions reduction targets of 'net zero' scope 1 and 2 greenhouse gas emissions by 2040. Specifically, ACCR alleges that Santos' Annual Report conveyed a misleading impression that it had identified a series of steps, based on reasonable assumptions, that were sufficient to achieve net zero greenhouse gas emissions by 2040, and that it intended to implement those steps. It alleges that the misrepresentations occurred both by *representation* and *omission*.

The representations include claims that Santos has a 'clear' and 'credible' transition roadmap. The omissions include:

- of the significant assumptions, qualifications and contingencies alleged to attach to the decarbonisation plans (which heavily rely on CCS),
- of the fact that Santos has not yet made a final decision to invest in or proceed with the relevant CCS projects, and
- of its intention to expand its natural gas production activities in the near term, including LNG projects in Barossa, Dorado and Narrabri.

ACCR is seeking declarations of contravention, public corrective statements, and injunctions to prevent the reoccurrence of the alleged breach.

Insight

A short step to claims against directors?

ACCR's claim against Santos is limited to the company itself, and to allegations of misleading disclosure. However, it is not difficult to conceive of circumstances in which such a claim could also be extended to directors and officers personally. This is particularly when it involves statements made in the annual report, which must be approved under a resolution of the directors under the Corporations Act. It is also feasible that such claims may be extended to a breach of a director's duty of due care and diligence, under the Australian doctrine of 'stepping-stones' liability. The potential for these exposures reinforces the importance of robust board evaluation of a company's net zero targets and broader sustainability claims, and adequate documentation of that evaluation. Directors may seek specific advice and assurance on:

(a) whether the basis by which the business considers that the targets (in the form expressed) may be achieved is reasonable and with clear disclosure of any associated limitations;

(b) the strategic implications that the targets imply; and

(c) the scheduling of integration of relevant planning and reports on action into the board agenda in order to demonstrate genuine intention.

Insight

ACCR's choice of counsel

The ACCR is being represented by Noel Hutley SC and Sebastian Hartford-Davis, who are the authors of the influential 'Hutley Opinion' on directors' duties and climate change. The most recent update to the Hutley Opinion (April 2021) highlighted the risk of 'greenwashing' liability for misleading disclosure should there be inconsistency between a company's stated position and ambition on climate risk management, and its internal strategy, plans and actions.

MinterEllison has acted as instructing solicitors on all three Hutley Opinions. See further: New Hutley Opinion: What does it mean for directors? (April 2021).

Emissions reduction targets – recent cases

Abrahams v Commonwealth Bank Australia: shareholder activists seek books and records

In August 2021, Equity Generation Lawyers filed a books and records claim against CBA on behalf of shareholders Mr and Mrs Abrahams under section 274A of the *Corporations Act*. In short, the claim seeks production of documents created by CBA in analysing the consistency of new coal, oil and gas (and related pipeline/ship infrastructure) project finance under stated ESG policies.

Documents are sought in the context of CBA's 2019 environmental and social framework and policy, including internal documents created for the purposes of:

- carrying out an assessment of the environmental, social and economic impacts of seven coal, oil and/or gas (and related infrastructure) projects;
- carrying out an assessment of whether the projects are in line with the goals of the Paris Agreement; and
- discharging any obligation or responsibility that any CBA unit, division or employee has under CBA's internal environmental and social policy.

The claimants also seek access to documents that record consideration of the adoption of CBA's 2021 climate commitments – which limit the Paris-aligned commitment to project financing only – and include any documents that were provided to the board.

Insight

A 'books and records' first

The books and records claim is not the first climate change-related claim brought by the Abrahams' against CBA. In 2017, retail shareholders brought a claim against the bank, alleging corporate law breaches due to its alleged failure to disclose climate change-related business risks, specifically including possible investment in the Adani Carmichael coal mine. That claim was widely considered to be the first climate-related shareholders' misleading disclosure claim filed globally. It was withdrawn after a few weeks, following the publication of CBA's annual report for the subsequent financial year.

This claim also appears to be one of firsts: the first known 'books and records'-style claim where shareholders have sought to use statutory inspection powers to obtain information on their company's approach to climate change. Books and records claims have not, to date, been commonly deployed in Australia. However, such claims are routinely invoked in the United States under section 220 of the Delaware General Corporation Law, often by shareholders seeking to gather information on which to base a decision whether to commence securities fraud proceedings. In recent cases such as AmerisourceBergen, the Delaware Courts appear to be taking a more expansive approach to the requisite 'proper purpose', finding that it is enough for a shareholder to show they have a credible basis to investigate potential wrongdoing, waste or mismanagement, rather than needing to identify the intended use for the information sought.

An order may only be made under s247A if the Court is satisfied that the applicant is acting in good faith and that the inspection is being made for a 'proper purpose'. The 'purpose' for which the applicants are seeking to inspect CBA's books is not specified in the Originating Process. However the request indicates the applicants are interested in both the implementation of existing policies, and the board's involvement in the decision to adopt renewed climate commitments in 2021.

Regardless of the outcome of the application, its filing illustrates the potential for shareholder remedies to be deployed to obtain information on whether companies are robustly implementing their stated policies on climate change. This is critically important at a time where companies are grappling with how to implement ambitious emissions reduction strategies set in an environment of heightened stakeholder pressure and expectation. Quite apart from the Abrahams claim, the law provides little room for misalignment between commitments and actions, and offers a range of remedies by which strategic litigants may seek to pursue associated grievances.

Common greenwashing risk two – 'truth to label'

2 Product or service 'truth to label'

Companies and financial institutions alike are being held to tighter account in their use of terms such as 'sustainable' or 'green', which have moved from being amorphous (and thus broadly defensible) to imply a more defined – and much higher – standard of conduct.

While there is still no universal definition of 'sustainability' or 'green', frameworks such as the EU's Green Finance Taxonomy are starting to raise the bar on when such terms can be justified. With these emerging standards and elevated market expectations, it is more important than ever to be clear about exactly labels mean, and that what they mean is credible.

'Truth to label' in financial services

With the huge growth in ESG and green-labelled financial products, 'truth to label' has emerged as a particular focus for financial institutions in 2021. From ASIC in Australia to the SEC and Department of Justice in the US, prudential and securities regulators have announced thematic reviews into the sustainable investment credentials promoted by regulated entities. ASIC has issued a number of statutory notices to produce relevant information to superannuation funds, under section 912C of the *Corporations Act*. And there has been an explosion in 'whistleblower' claims, where employees are reporting their concerns about the disconnect between promoted credentials and investment practice.

'Truth to label' for goods

Misrepresentation as to the nature, quality or characteristics of goods or services may contravene the prohibitions against specific misrepresentations under Part 3.1 of the *Australian Consumer Law*. This is particularly significant as a breach of those provisions may attract the imposition of a pecuniary penalty in the amount of the greater of $10,000,000; three times the value of that benefit to the corporate group from the contravention; and 10% of annual turnover.

While pecuniary penalties are not being sought in that case, the *ACCR v Santos* claim includes an allegation that Santos has acted in breach of section 33 of the *Australian Consumer Law.* This is alleged on the basis that the description of its natural gas as 'clean energy' is liable to mislead the public as to the nature, characteristics, suitability and quality of its primary product.

On the next page, we draw on recent claims to illustrate a number of important principles to consider in labelling of goods or services as 'green' or 'sustainable'.

'Truth to label' – key pointers to avoid 'greenwash'

Sustainability credentials are financial management credentials, overstatement of which can have a material impact on corporate value.

Prudent management of these issues requires collaboration between the sustainability team, executive, accounting and finance team, strategic communications, and legal teams.

As the bar of 'sustainability' becomes higher, more specific and more measurable, 'truth to label' is increasingly important.

This applies to general claims of a company or institution's sustainability credentials, and increasingly, to specific disclosures of the potential harms associated with use of emissions-intensive products.

Sustainability credentials are an important employment consideration.

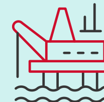
In addition to exposing companies to external legal challenge, a failure to make good on claims may expose companies to internal legal challenges by staff.

‘Truth to label’ – recent cases

DWS Group regulatory investigation: whistleblower claims into ESG in investment practice

In September 2021, it was revealed that the US Securities and Exchange Commission, US federal prosecutors, and the German financial supervisory authority BaFin each have probes into the asset manager arm of Deutsche Bank. This was for allegedly misleading investors on how it uses ESG and sustainability criteria across its US$1 trillion fund products. The regulatory investigations follow whistleblower allegations by their former Head of Sustainability published by the Wall Street Journal earlier this year. DWS has issued a statement strongly denying the allegations made against it.

There not yet any suggestion that the Australian business of DWS is being investigated by ASIC in relation to the global claims. However, this should bring little comfort to Australian financial institutions, as ASIC is otherwise extremely active in this area. Its recent supervisory activities include a thematic review via notices to provide information to substantiate sustainable investment claims under section 912C of the Corporations Act.



ACCR v Santos Ltd: shareholder activists challenge ‘clean energy’ label

In addition to challenging the veracity of Santos’ emissions reduction targets, described on page 5 above, the ACCR also alleges Santos statements on ‘clean energy’ contravene the prohibitions against misleading of deceptive conduct in the *Corporations Act* and *Australian Consumer Law*.

ACCR alleges that Santos’ references to natural gas as ‘clean energy’ convey a misleading impression that the extraction of natural gas, and the generation of energy using natural gas, does not have a material adverse effect on the environment (including via the release of material amounts of greenhouse gases into the atmosphere).

The misrepresentations are alleged to occur by both *representation* (essentially of the 'clean' nature of the fuel) and *omission*. (The omissions are alleged to include the significant amount of methane and carbon dioxide released in the process of producing and using the gas, and of the availability of alternative energy technologies that do not release material quantities of those greenhouse gases).

The claim also alleges that the description of Santos’ natural gas as ‘clean energy’ is liable to mislead the public as to the nature, characteristics, suitability and quality of this product, contrary to the prohibition against specific misrepresentations in the supply of goods under section 33 of the *Australian Consumer Law*.

ACCR is seeking declarations of contravention, public corrective statements, and injunctions to prevent the reoccurrence of the alleged breach.

Insight

Bringing US claims arguments to Australia

The ACCR v Santos claim regarding misrepresentations as to the nature and characteristics of goods echoes a line of argument being deployed in the numerous cases for climate adaptation damages currently being pursued by US cities, counties and States against large coal, oil and gas producers (often referred to by shorthand as the 'carbon major claims'.)

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Common greenwashing risk three – green credentials in advertising

3 Corporate credentials and advertising

Consumer protection regulators are increasingly scrutinising greenwash in advertising campaigns.

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The focus of influential investors and financial regulators is on greenwashing in financial filings. However, misleading sustainability credentials in consumer-facing advertising remains a key source of reputational and legal risk.

A recent review of 500 business websites by the international peak body for consumer protection regulators, the International Consumer Protection Enforcement Network (ICPEN, of which Australia's ACCC is a member) found that 4 in 10 appeared to make sustainability claims that were potentially misleading. These included:

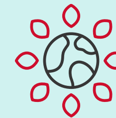
- vague claims and unclear language including terms such as 'eco' or 'sustainable' or reference to 'natural products' without adequate explanation or evidence of the claims;
- own brand eco logos and labels not associated with an accredited organisation; and
- hiding or omitting certain information, such as a product's pollution levels, to appear more eco-friendly.

While regulators, strategic litigants and civil society groups are scrutinising consumer-facing advertising in the legal domain, new forms of reputational risks are arising for some companies in the online world. This includes activist targeting of the social media accounts of fossil fuel companies, in a practice described as 'greentrolling'.

ClientEarth v BP corporate credentials advertising

In 2019, UK-based environmental NGO ClientEarth alleged BP misled the public by the way in which it presented its energy business in advertising campaigns in violation of the OECD Guidelines for Multinational Enterprises. Despite representing the business as low carbon in the campaign, BP's capital expenditure in renewables was approximately 1% relative to its fossil fuel energy business. The UK national contact point found the complaint was material and substantiated and would have proceeded had BP not already withdrew the advertising campaign.

ACCC v Volkswagen AG misleading environmental performance claims



In December 2019, the Federal Court imposed a record penalty for breach of the *Australian Consumer Law*, $125 million, against Volkswagen AG in relation to the global 'Dieselgate' scandal.

Volkswagen admitted to making false representations when seeking to import more than 57,000 diesel vehicles between 2011 and 2015, and when listing those vehicles on the Australian Government's Green Vehicle Guide website. Volkswagen did not disclose that the vehicles were fitted with two mode software, which caused them to operate in one mode for the purposes of emissions testing and another when being driven. If tested in that second mode, the vehicles would have breached Australian emissions standards.

In April 2021, the Full Federal Court dismissed Volkswagen's appeal against the quantum of the penalty.

Advertising - key pointers to avoid 'greenwash'

Consider regulatory guidance on green advertising

In Australia, the ACCC has published guidelines on sustainability claims in labelling, packaging and advertising for more than a decade. More recently, in September 2021 the UK Competition & Markets Authority published new Guidance on Environmental Claims on Goods and Services. The Guidance, colloquially known as the 'green claims code' sets out six key principles for environmental claims:

- claims must be truthful and accurate;
- claims must be clear and unambiguous;
- claims must not omit or hide important relevant information;
- comparisons must be fair and meaningful;
- claims must consider the full life cycle of the product or service; and
- claims must be substantiated.

Avoid making general claims

Avoid claims that are defensible in relation to part, but not all, of your company's products or services, or that only hold under certain conditions. (See *Client Earth v BP* and *ACCC v Volkswagen AG*).

Be specific, but not selective

Claims should be clear and specific in terms of the environmental benefit conferred, rather than vague and general. However, care should be taken to ensure that promotion of one specific aspect of a product's characteristics or company's sustainability credentials does not imply broader 'green' operation.

Context: acceleration of legal and market developments over the past 12 months

Whilst recent claims are significant legal interventions in their own right, the implications cannot be considered independently of other recent legal and market developments in the corporate climate disclosure and risk governance space. The legal developments represent a culmination of market pressure that has been building on both companies and financial institutions to both accelerate their ambition to reach 'net zero' greenhouse gas emissions consistent with the goals set out in the Paris Agreement, and to disclose their strategy for managing climate-related financial risks across the plausible range of future climate scenarios.

Timeline

September 2020

> Influential investor coalition the Climate Action 100+ (US$52 trillion FUM) set out clear expectations for transition-exposed entities to be assessed against their net zero benchmark.

November 2020

> The Institutional Investor Group on Climate Change (€35 trillion FUM) asks high-emitting and transition-exposed entities to prepare Paris-aligned accounts in their Investor Expectations for Paris-aligned Accounts.

May 2021

> The Hague District Court in *Milieudefensie v Royal Dutch Shell* orders Shell to reduce its emissions by 45% by 2030 on a 2019 baseline and across scopes 1, 2 and 3 in order to meet the unwritten standard of care it owes to Dutch residents.

> The Federal Minister for the Environment is found to owe a duty of care to Australian children not to cause personal injury when considering environmental approvals for a coal mine extension in *Sharma v Minister for the Environment.* This is the latest in a series of cases in Australia and overseas relating to the obligations of government entities to take climate-related harms into account in discharging their statutory mandates.

> The International Energy Agency (IEA) publishes its Net Zero Roadmap, which sets out an outlook scenario to contain global warming to 1.5°C above pre-industrial averages that contemplates no new coal, oil or gas development post-2021.

> Activist investor Engine No.1 is successful in its campaign to have 3 of 4 nominated new 'climate competent' directors elected to the board of ExxonMobil. The votes were supported by proxy advisors (ISS, Glass Lewis) and shareholders such as BlackRock.

> At Chevron, 61% of shareholders voted in favour of a proposal to require it to reduce scope 3 emissions (ie emissions from the downstream combustion of their oil and gas).

August 20201

> The potential impacts of climate change on credit impairments are disclosed in CBA's financial statements, evidencing increased application of the AASB / AUASB and IFRS guidance on the integration of climate risks into financial statements.

> The IPCC publishes the 6th Assessment Report Climate Change 2021: The Physical Science Basis, which sets out the urgent need to accelerate global emissions reductions to stabilise the climate at a 'safe' level (see further discussion in our Insight *The science is in – so what now? Implications of the new IPCC Report for corporate and government decision makers*).

September 2021

> Revelations of investigations by the US Department of Justice, US federal prosecutors, and German financial supervisory authority BaFin into whistleblower claims that the investment management arm of global financial giant Deutsche Bank AG, DWS Group, has misled the market by overstating the robustness of its ESG screening processes.

Overarching trends

Disclosure – Influential investor bodies clarified and accelerated their expectations for transition-exposed entities. This has prompted a number of companies (particularly in the energy and resources sector) to publish climate transition sensitivity analysis on asset impairments in the notes to their financial accounts, and/or green capex/revenue ratios.

Shareholder pressure – A sharp rise in shareholder requisitions on climate change, including resolutions seeking 'Say on Climate' advisory votes on the corporate transition plans of large energy and resources companies. These developments are not only of obvious significance for energy and resources companies, but are broadly indicative of the pressure to both ensure targets are Paris-aligned, and of the need to demonstrate a credible strategic pathway for achieving those targets.

Financial statements – Increased uptake of guidance issued by the AASB/AUASB in Australia, and internationally by IFRS, on the integration of material climate-related assumptions into financial statement accounting estimates. These include asset useful lives, fair valuation and impairment, provisions for onerous contracts and bad and doubtful debts.

Transition from fossil fuels – The *ACCR v Santos* claim reflects broader market debate over whether natural gas can be considered a 'green' fuel in the transition to a net zero economy. This is notably reflected in ongoing impasse over whether it should be classified as such under the EU Taxonomy. On one side of that debate lie arguments extolling the importance of gas as a source of 'baseload' power to smooth variability in solar and wind generation, as a 'transition fuel' whose combustion has a lower emissions footprint than coal-fired energy generation, and for which CCS (or nature-based sequestration or offsets) provides the potential for netting emissions. On the other side lies scrutiny of the fuel's lifecycle emissions intensity relative to renewable energy sources, and renewed focus on the potency of methane as a greenhouse gas as pressure to reach net zero emissions accelerates, with a new voluntary methane protocol set to be formalised at COP26.

How MinterEllison’s climate and sustainability risk governance team can help

This publication contains general observations on developments that have the potential to differentially impact on client corporations, in their unique context. MinterEllison's leading Climate and Sustainability Risk Governance team would be pleased to provide further advice on the implications, exposures and risk management strategies, relevant to your circumstances.

MinterEllison's Climate and Sustainability Risk Governance team is an integral part of our ESG practice. We lead the market in advising on the commercial law consequences of climate change and sustainability issues, through a financial and a liability lens. Our experts translate your risk into legal obligations, and turn insight into actionable governance strategies and risk management frameworks.

Regardless of whether your strategic approach is proactive or reactive, we can help you to identify potential exposures relevant to your circumstances; so that you can proactively get ahead of changing regulatory and stakeholder expectations.

We can help to:

- review your current-climate related disclosures and identify potential exposures before they crystallise;
- ensure climate-related disclosures and action plans are able to be substantiated; and
- identify and implement actions to rectify any potential or real greenwashing risk and embed as ‘business as usual’ in enterprise risk and compliance frameworks.

Please contact our Head of Climate and Sustainability Risk Governance, **Sarah Barker**, on +61 402 220 556, or sarah.barker@minterellison.com.

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