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SUSTAINABILITY INSIGHTS

A strategic review of the latest in sustainability policy and practice

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How geopolitics, climate tech and reporting mandates are reshaping corporate risk

POLLUTION AND THE CIRCULAR ECONOMY

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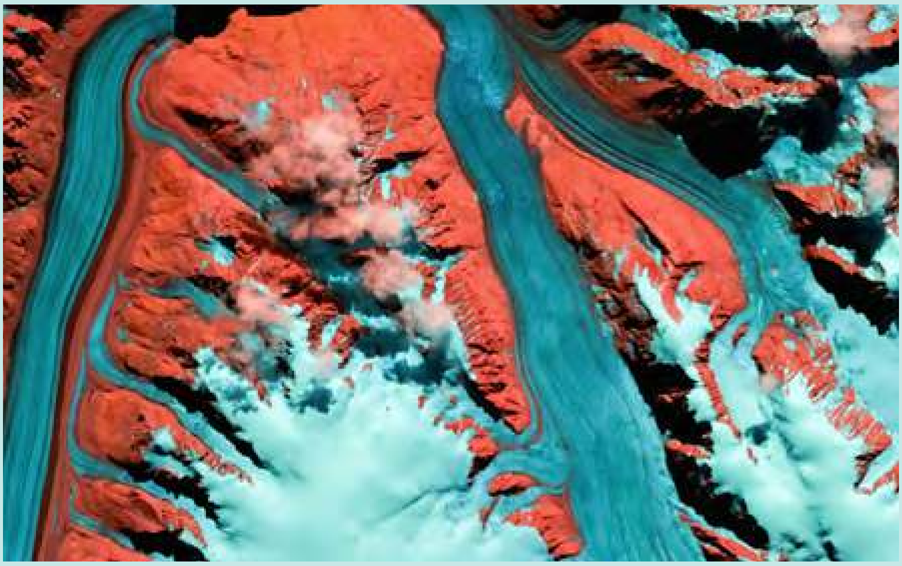

Climate Change and Advisory Opinions of International Courts:

Who is responsible for climate change and what are the implications for business?

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Three landmark legal proceedings have recently been brought before international courts and tribunals seeking to clarify the legal responsibilities of States in the context of climate change.

On 21 May 2024, the International Tribunal for the Law of the Sea (**ITLOS**) delivered a highly anticipated Advisory Opinion on the Request submitted to ITLOS by the Commission of Small Island States (**COSIS**) on climate change and international law.[1] This is the first time that an international court or tribunal has addressed States' obligations to combat climate change, especially within the framework of the 1982 United Nations Convention on the Law of the Sea (**UNCLOS**).

From 2 to 13 December 2024, the International Court of Justice (**ICJ**) held public hearings on the request for an Advisory Opinion on the obligations of States in respect of climate change. The ICJ received varying submissions on the legal obligations of countries to protect the climate; and should they fail to comply with them, whether they could face any legal consequences. The Advisory Opinion is anticipated to be delivered later this year.

A climate change advisory opinion on the scope of State obligations in responding to the climate emergency under international human rights law is also imminently expected from the Inter-American Court of Human Rights (**IACHR**), following public hearings concluding in May 2024.

All three advisory opinions will be pivotal in defining, and potentially expanding the existing scope of, the legal duties that States and ultimately corporations have to address climate change. Below, we unpack each of the requests for advisory opinions, including an overview of the relevant court or tribunal, and analyse what this might mean for business.

All three advisory opinions will be pivotal in defining, and potentially expanding the existing scope of, the legal duties that States and ultimately corporations have to address climate change.

What is an Advisory Opinion?

Advisory Opinion proceedings are where a tribunal or court provides legal opinions on questions referred to it by authorised bodies. The ICJ, for example, can only deliver an advisory opinion in response to a referral from the United Nations General Assembly, the United Nations Security Council, or other United Nations organs. This is distinct from the process of contentious proceedings between specified parties.

States, international organisations and other experts, including Special Rapporteurs, are invited to make written and oral statements on the question(s) put to the court or tribunal, to inform its deliberations and conclusions. Advisory opinions are not legally binding on States but are considered highly persuasive in interpreting international instruments and parties' obligations.

International Tribunal for the Law of the Sea Advisory Opinion

What is ITLOS?

ITLOS is an independent judicial body established under UNCLOS – an international agreement that establishes the rules governing all uses of the oceans and their resources, and all marine and maritime activities. ITLOS has jurisdiction to deal with all disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it in accordance with UNCLOS.

The Advisory Opinion

On 12 December 2022, COSIS, comprising of small island States including Tuvalu, Vanuatu and the Bahamas, requested ITLOS to give an Advisory Opinion on two questions, addressing the specific obligations of State Parties to the UNCLOS in relation to pollution and the effects of climate change on the marine environment.

ITLOS's Advisory Opinion, issued on 21 May 2024, clarified that States have a positive obligation to take all necessary measures to prevent, reduce and control marine pollution from GHG emissions under Article 194 of UNCLOS, considering the 'best available science' and relevant international rules and standards. In reaching this position, ITLOS made the unprecedented recognition that greenhouse gas (**GHG**) emissions are a form of marine pollution.

Notably, ITLOS highlighted that States have an obligation to monitor the risks and effects of pollution, publish reports and undertake comprehensive environmental impact assessments (**EIAs**) of activities. In this respect, ITLOS emphasised that EIAs are crucial and must be undertaken for any planned activity, either public or private, if there are 'reasonable grounds for believing' that the activity could lead to substantial pollution to the marine environment or significant and harmful changes through GHG emissions (Articles 204 to 206). The Advisory Opinion set out that EIAs, where appropriate, should consider the cumulative impacts of activities on the environment, particularly in the context of GHG emissions. It also confirmed that EIAs can include assessment of socio-economic impacts.

The Advisory Opinion clarified critical aspects of States' obligations under UNCLOS concerning marine pollution and environmental preservation in the context of climate change (see our article *International Tribunal for the Law of the Sea delivers first climate change Advisory Opinion* for further details).

Inter-American Court of Human Rights Advisory Opinion

What is the IACHR?

The IACHR is a regional human rights tribunal, established under the American Convention on Human Rights, vested with jurisdiction over all matters relating to the interpretation and application of that Convention and other treaties concerning the protection of human rights in the American States.[2]

The Advisory Opinion

On 9 January 2023, Chile and Colombia signed a joint request for an Advisory Opinion to be presented before the IACHR. The request seeks clarification on the scope of State obligations in responding to the climate emergency under international human rights law.[3] The request acknowledges the human rights effects of the climate crisis, especially for vulnerable communities and ecosystems in Latin America, and emphasises the need for regional standards to accelerate climate action. Other issues raised in the request concern duties inherent to the right to life, the rights of children and future generations, and States' common but differentiated responsibilities.

The IACHR extended an invitation to stakeholders to contribute with observations. The submission period, initially closing on 18 August, was extended twice – first to 18 October and finally to 18 December 2023. This extension led to a diverse array of inputs, including from nine States. The public hearings of the Advisory Opinion were held in Barbados from 22 to 25 April, in Brazil on 24 May and in Manaus from 27 to 29 May 2024.

With one of the most inclusive participation efforts by any international tribunal, the IACHR received over 265 submissions representing over a thousand individuals and entities, setting the stage for an Advisory Opinion with the potential to leave a strong legal footprint.

It is anticipated that the IACHR's Advisory Opinion, once issued later this year, will be particularly relevant for unpacking businesses' obligations to respect human rights and refrain from engaging in conduct that negatively impacts the climate, and the requirement for both States and businesses to remedy any harms and violations of human rights resulting from corporations' actions.

Advancement of climate change rights in the IACHR

To date, the Inter-American system on human rights has played a pivotal role in framing climate change as a critical aspect of human rights protection. In 2017, in response to a request from Colombia, the IACHR issued an Advisory Opinion recognising the right to a healthy environment as a human right.[4] Additionally, it acknowledged the extraterritorial obligations of States under the American Convention on Human Rights, opening a legal pathway for individuals to seek recourse against States for environmental harm across borders, including climate-related damages.

The IACHR has recognised and upheld the right to a healthy environment and the relationship between the environment and human rights on several occasions. In March 2024, the IACHR delivered a landmark judgement in *Community of La Oroya v Peru*,[5] where it found that Peru had breached its obligation to protect the right to a healthy environment of the community of La Oroya, in failing to protect the community from pollution emitted from a private metallurgical smelter. The IACHR emphasised that the obligations of the State regarding human rights violations caused by all business enterprises are to 'prevent, investigate, punish and redress such abuses through appropriate policies, regulatory activities and prosecution'.[6]

International Court of Justice Advisory Opinion

What is the ICJ?

The ICJ is the primary judicial organ of the United Nations. The ICJ's role is to resolve, in accordance with international law, legal disputes submitted to it by States and to give Advisory Opinions on legal questions referred to it by authorised United Nations organs and specialised agencies. Unlike specialist international courts and tribunals, the ICJ's jurisdiction is general, and it may entertain any question of international law.

The Advisory Opinion

On 29 March 2023, the United Nations General Assembly (**UNGA**) adopted a resolution requesting an Advisory Opinion from the ICJ on whether States have specific obligations under international law to prevent and redress the adverse effects of climate change in order to protect the climate system as well as present and future generations.[7] The public hearings were held from 2 to 13 December 2024. As the request for the Advisory Opinion was brought by the UNGA, all UN members were entitled to participate in the proceedings. A total of 96 States and 11 international organisations presented oral statements.

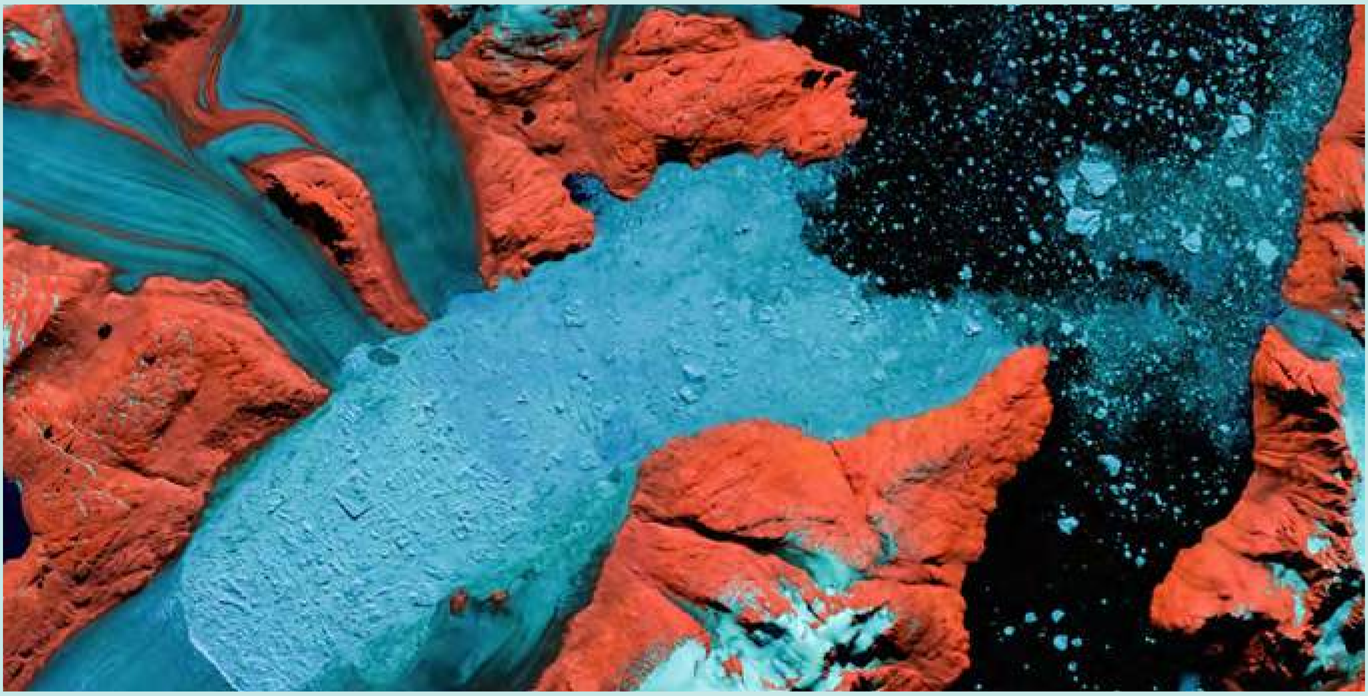
States' submissions broadly represented two positions. Historical GHG emitters, being predominantly developed nations such as the United States, United Kingdom and the Nordic Countries, argued that the international climate frameworks, including the UNFCCC, Paris Agreement and the Kyoto Protocol, should constitute all climate-related obligations. These States argue that the ICJ cannot impose obligations from other treaties or customary international law. They contend that past emissions should not result in reparations, either due to difficulties in establishing causation (as submitted by Australia) or because GHG emissions were not historically considered wrongful acts (as argued by the US and Russia).

Instead, these States advocate for addressing climate harm through existing climate framework mechanisms, such as the voluntary loss and damage fund.

On the other hand, other smaller developed nations, such as France, Switzerland and the Netherlands, and most developing nations argued that the existing climate framework should be interpreted alongside broader international customary law. These States emphasise that obligations such as preventing transboundary harm, the principle of due diligence and human rights law obligations apply in the context of climate change. Many of these countries also align with the principle of Common but Differentiated Responsibilities (**CBDR**), which asserts that while all States have a duty to combat climate change, their responsibilities should be differentiated according to their historical contributions.

Most developing States are calling for financial and non-financial assistance from developed nations, including debt cancellation (as proposed by Kenya) and technical support (sought by Papua New Guinea and Burkina Faso). Additionally, some States are advocating for human rights obligations, specifically regarding climate-induced displacement and territorial loss due to rising sea levels, as highlighted by countries like Jamaica, Vanuatu and Bangladesh.

States submitted written reply submissions on 20 December 2024 in response to questions from the bench. The ICJ will now deliberate and is anticipated to deliver its advisory opinion in the first half of this year. This request constitutes a unique opportunity for the ICJ to deliver an Advisory Opinion detailing the obligations of States under international law in respect of climate change in a comprehensive manner and particularly with respect to the application of customary international law and the responsibilities and consequences should States not fulfil their obligations.



What do these Advisory Opinions mean for Businesses?

These three requests for Advisory Opinions are especially timely – there is an urgent need for certainty around countries', and by implication businesses', international obligations in respect of climate change.

While the Advisory Opinions will not themselves be legally binding, they are considered authoritative and will clarify the rights and obligations of States under existing binding international law, providing a clear legal benchmark on States' obligations in respect of climate change.

ITLOS' Advisory Opinion, and the ICJ and IACHR Advisory Opinions once issued, will have significant direct and indirect implications for businesses. As highlighted by the IACHR's recent judgement in *Community of La Oroya v Peru*, States' and corporations' obligations under international law in the context of climate change are ultimately intertwined.[8] Furthermore, ITLOS' Advisory Opinion emphasised the evolving regulatory landscape concerning climate responsibility, and pointed to heightened scrutiny and regulatory enforcement concerning GHG emissions and environmental preservation, for both States and corporations.

Companies operating in sectors with significant environmental footprints must anticipate the likelihood of regulatory changes and be prepared to proactively adapt their practices to align with evolving standards. Businesses are increasingly under pressure from consumers, investors and stakeholders to incorporate sustainable practices within their operations, minimise their adverse impact on the environment and transition towards renewable energies, publicly disclosing these processes.

All three Advisory Opinions will also contribute to the growing body of case law which claimants in domestic and international litigation may rely on when seeking to hold companies accountable for climate change inaction.

Climate activities are increasingly drawing from decisions across jurisdictions and utilising judgements or opinions from a wide range of courts or tribunals to support novel climate-related arguments. These Advisory Opinions will create another avenue for those arguments and provide further impetus for cases against States and corporations (especially transnational companies).

Climate litigation is increasingly being brought against private actors, seeking to clarify corporations' responsibilities in the context of climate change and hold them accountable for climate harm. In April 2024, the New Zealand Supreme Court delivered a landmark decision on a case brought by a Māori elder against seven of New Zealand's largest greenhouse gas (GHG) emitters, determining that tort law can be used to challenge the GHG emissions of a private entity.[9] While the substantive proceedings are yet to be heard before the High Court of New Zealand, this decision has opened the door for common law tort claims against private sector GHG emitters to proceed to trial, and will have significant implications for the prospects of future similar claims.

Businesses should closely follow these international law developments and be cognisant of any downstream implications of Advisory Opinions from international courts and tribunals on their operations and value chains.

By taking proactive steps to align with domestic and international climate commitments and disclosure regimes, and incorporating sustainable practices and policies, businesses can be prepared for regulatory implications and mitigate regulatory and reputation risks and contribute to action on climate change.

/ TREND WATCH

TRUMP

What does Trump's return mean for sustainability?

/ **WORDS BY**

Luke Heilbuth
CEO, BWD Strategic

Trump's return to power reflects a broader trend in liberal democracies: momentum is swinging back towards politicians who champion freedom over equality. This has implications for sustainability, which has become caught in the crossfire of the American culture wars.

Even before Trump's re-election, corporate America was retreating from its embrace of identity politics. Trump's victory confirms that an overt focus on race, gender and sexuality has become a losing proposition at the ballot box.

Across the West, many voters are rejecting identity politics as elitist, authoritarian, and misaligned with their values and economic priorities. Centre-left parties are sharpening their political messaging in response to focus on more concrete concerns like housing supply and grocery prices.

Corporate values and risk

Companies mirror political trends, largely because the profit motive incentivises them to conform with the expectations of politicians, customers and investors. That's why Meta is abandoning its diversity, equity and inclusion (DEI) policies: CEO Mark Zuckerberg hopes that aligning with the cultural preferences of the new administration might help avoid regulatory blowback and improve his strained relationship with Trump.

This decision foreshadows a larger corporate pivot: the era of multinationals championing social justice initiatives unrelated to their core products and services is ending.

This development reveals a truth often overlooked. Corporate 'values' are seldom deeply held. They are instead shaped by risk and reward. Until recently, boards and CEOs believed they gained social capital by virtue signaling their social justice credentials.

Today, the same claims carry financial and reputational risk. Conservative activist Robby Starbuck, for example, has successfully pressured 15 multinationals to roll back or modify diversity and inclusion policies he claims conflict with consumer values.

A hierarchy of priorities

But not all sustainability issues are created equal. Some are rooted in science and evidence, such as managing physical climate risks, addressing biodiversity loss in supply chains, and implementing robust governance controls. These factors impact value creation and long-term resilience, regardless of which way the political winds blow.

Other issues, particularly within the 'social' pillar of sustainability, are less categorical. Investments in DEI can be critical to fostering inclusive cultures and innovation, but their link to superior financial performance remains dependent on context and execution, with evidence varying across industries and geographies.

"THE CLIMATE AGENDA HAS NOTHING TO DO WITH THE CLIMATE. IT'S ABOUT PUNISHING THE EVERYDAY CITIZEN AND REWARDING AN ELITE CLASS."

Conflating climate change with identity politics

Expect fossil fuel companies and the politicians that back them to exploit this ambiguity by conflating evidence-based sustainability considerations with identity-driven initiatives. Their strategy aims to erode public trust in science by framing all forms of sustainability as equivalent to identity politics – a vanity project imposed on the majority by a hypocritical and out-of-touch elite.

Republican presidential candidate Vivek Ramaswamy captured the essence of this deception when he said: "The climate agenda has nothing to do with the climate. It's about punishing the everyday citizen and rewarding an elite class."

Sustainability as long-term value and resilience

Trump's return doesn't signal the end of sustainability. It marks a shift in how it must be framed and executed. The path forward lies not in virtue signaling, but in positioning sustainability as the pursuit of long-term value and resilience. Businesses must focus on efforts that deliver measurable results, align with core strategy, and avoid polarising jargon like ESG.

Every capable decision maker understands the paradox of making money. That forces beyond the balance sheet – shifting social norms, political trends, emerging technologies, demographic changes, resource scarcity and climate change – ultimately shape markets and shareholder returns.

Sustainability is shorthand for this understanding. It endures because it addresses challenges no serious business can afford to ignore: escalating climate risks, nature loss, competition for talent, and mounting pressure from consumers, regulators and investors for transparency. These forces are not abstract – they define how businesses compete, create value, and endure in a changing world.

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/ REGULATORY UPDATES

Regulatory updates

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Australia's regulatory framework evolved substantially in 2024.

The Labor Government enacted over 140 new laws during the year, with more than 30 passed on its final sitting day on 29 November 2024. These reforms addressed critical ESG regulatory issues – including energy and decarbonisation initiatives, sustainability standards, privacy and anti-money laundering frameworks.

With 2024 confirmed by multiple scientific agencies, including the European Union's climate change service, Copernicus, to be the warmest year on record and the first calendar year that average global temperatures have exceeded 1.5°C above pre-industrial levels,[10] it is imperative that governments and businesses implement ambitious climate commitments and effective regulation in order to meet the targets set by the Paris Agreement.

In this issue of the *Sustainability Insights*, we unpack key domestic and international regulatory developments, our expectations for the ESG landscape for 2025 and what these mean for businesses.

Decarbonisation updates

Future Made in Australia: Guarantee of Origin Scheme and Production Tax Credits enacted

A centrepiece of the 2024 Federal Budget was the Government's plan for 'A Future Made in Australia', committing investment of $22.7 billion over the next decade to implement a plan to maximise the economic and industrial benefits of Australia's transition to net zero.[11] Following extensive debate in the upper and lower houses of Parliament, the suite of Future Made in Australia Bills passed both houses in the final sitting days of 2024, bringing into effect the legislative framework for the Future Made in Australia plan.

Guarantee of Origin Scheme

On 28 November 2024, Parliament passed the *Future Made in Australia (Guarantee of Origin) Bill 2024* (Cth),[12] the *Future Made in Australia (Guarantee of Origin Charges) Bill 2024* (Cth)[13] and the *Future Made in Australia (Guarantee of Origin Consequential Amendments and Transitional Provisions) Bill 2024* (Cth)[14] (**Guarantee of Origin Bills**). The Bills received royal assent on 10 December 2024.

The Guarantee of Origin Bills establish the legislative framework for the Future Made in Australia Guarantee of Origin Scheme – a voluntary program designed to certify renewable electricity and track and verify attributes associated with low-emissions products, such as hydrogen. Participants that opt in to participate in the Guarantee of Origin Scheme, and produce low-emissions products or renewable electricity, will be able to generate certificates that contain information about their reduced emissions or renewable electricity attributes.

The Guarantee of Origin Scheme establishes two certification frameworks to be administered by the Clean Energy Regulator:[15]

- **Product Guarantee of Origin (PGO)** non-tradeable certificates: to track and verify the emissions associated with hydrogen and eventually other low-emissions products in Australia (including green metals and low-carbon liquid fuels). PGOs will be used to enable certified claims to be made regarding the emissions intensity of products; and
- **Renewable Energy Guarantee of Origin** (**REGO**) tradeable certificates: to certify that electricity is renewable and can be used to claim the benefits of renewable electricity use. REGO certificates will initially operate alongside and then, from December 2030, replace the current Large-scale Generation Certificate (**LGCs**) framework under the Renewable Energy Target Scheme.

PGO and REGO certificates will both be tracked through a public register, with the intention of providing greater certainty and trust to domestic and international customers. The Government has indicated that it will commence consulting on draft rules and methodologies to accompany the Guarantee of Origin Scheme in early 2025.[16]

The Guarantee of Origin Scheme is a fundamental part of the Government's Future Made in Australia plan to attract and enable investment, leveraging economic and industrial benefits of the global move to net zero. The PGO certificate will enable Australian producers of low-emissions products to make objective and credible claims about their products' emissions, and buyers (either voluntarily or for compliance purposes with national requirements or overseas schemes) to choose to purchase products with PGO certificates.

The introduction of REGO certificates will build upon the current market for LGCs in Australia, with wider eligibility for renewable generators and increased granularity of information allowing for novel decarbonisation strategies using the REGO certificate. There are various nuances between the Renewable Energy Target Scheme and Guarantee of Origin Scheme and, at this stage, it is uncertain how REGO certificates will be valued under the new Guarantee of Origin Scheme. Nonetheless, the introduction of REGO certificates signals support for an ongoing renewable energy certificate framework for businesses to operate within. REGO certificates will ultimately enable participants to create renewable energy certificates for all types of renewable energy generation.[17]

All businesses that may be directly or indirectly impacted by the Guarantee of Origin Scheme should closely follow the upcoming consultation on draft rules and methodologies, as these will shape the Scheme's final design. Engaging in the consultation process also offers an opportunity to influence the Schemes development and ensure that specific concerns are addressed. Businesses currently generating or using LGCs should closely review the Guarantee of Origin Scheme as enacted and develop a roadmap on how they can best participate in the Scheme.

Future Made in Australia Plan

On 29 November 2024, the *Future Made in Australia Bill 2024* (Cth) also passed both Houses of Parliament, receiving royal assent on 10 December 2024.[18] *The Future Made in Australia Act 2024* (Cth) establishes the National Interest Framework, designed to facilitate significant public investment that unlocks private investment across two streams:

- **net zero transformation:** industries that will make a significant contribution to the net zero transition and are expected to have an enduring comparative advantage, but will require public investment to make a significant contribution to emissions reduction at an efficient cost; and
- **economic resilience and security:** industries where some level of domestic capability is necessary or efficient to deliver adequate economic resilience and security, and the private sector would not invest in this capability in the absence of public investment.

On 29 November 2024, the *Future Made in Australia Bill 2024* (Cth) also passed both Houses of Parliament, receiving royal assent on 10 December 2024.

Future Made in Australia Plan (continued)

The Minister may direct assessments of certain sectors to be undertaken to analyse the extent to which the sector aligns with the National Interest Framework streams. This assessment will include consideration of whether Australia could be competitive in the sector, whether the sector could contribute to advancing the net zero transformation and whether the sector could improve Australia's economic resilience and security.

Entities carrying out activities that align with either of these streams may be eligible to receive financial support from the Future Made in Australia Innovation Fund, administered by the Australian Renewable Energy Agency (**ARENA**) which may include a grant, loan, indemnity, guarantee, warranty, investment of money or equity investment.

Businesses should closely review the Future Made in Australia Act and consider if they may be eligible for, or impacted by, any of the sector assessments or support. Priority sectors will include green metals, renewable hydrogen, low carbon liquid fuels and renewable energy technology manufacturing such as batteries. Even for those businesses unlikely to be directly affected, the investment is likely to have flow-on effects to input costs and supply chain and distribution processes for businesses across sectors.

Scope for a CBAM mechanism in Australia?

In May 2023, the EU became the first jurisdiction to implement a Carbon Border Adjustment Mechanism (**CBAM**). The EU CBAM commenced in 2023 with a transitional phase requiring only reporting, until 2026 when charges will start being levied. It is designed to ensure a fair price is paid for the carbon emitted during the production of goods that are imported into the EU to equivalate the carbon price of imports to that of domestic production and to encourage lower emission production in non-EU countries. In practice, the CBAM operates as a measure to impose tariffs on imports from countries which do not impose an equivalent price on the production and supply of carbon-intensive goods.[19]

Since July 2023, the Australian Government has been undertaking a comprehensive review of the role of carbon leakage as part of the reforms to the national Safeguard Mechanism (**Carbon Leakage Review**).[20] 'Carbon leakage' refers to the spillover effect where emission reductions in one place are 'cancelled out' by a corresponding increase in emissions elsewhere. This can occur due to differences between emissions reduction policy settings, whereby industries covered by an emissions reduction policy (such as Australia's Safeguard Mechanism) may be incentivised to offshore production to a country or region with weak or no carbon pricing to avoid compliance costs.

In March 2023, the Australian Government commissioned an expert 'Carbon Leakage Review' to assess future carbon leakage risks (including materiality of such risks for individual commodities), analyse different policy options to address carbon leakage (including an Australian CBAM) and assess the feasibility of those options. Notably, a consultation paper published on 1 November 2024 finds that a CBAM could be applied to imports of selected Safeguard-covered commodities with high carbon leakage risk from imports of the following commodities: cement; clinker and lime; ammonia and derivatives; steel; and glass.[21] The Government has not formally responded to the Carbon Leakage Review paper, meaning that the recommendations do not reflect official government policy.

While a CBAM has scope to positively increase climate ambitions, many countries and policymakers have expressed concerns with the mechanism, critiquing that the measure is protectionist and not compatible with international trade rules. In this respect, debate has arisen around potential conflicts between the EU CBAM and the rules of the World Trade Organisation, which seek to remove barriers in trade. The CBAM could conflict with the 'most favoured nation' rule if it treats imports from WTO member countries differently than others based on their carbon content.

There are also concerns that the emissions reductions efforts of the CBAM may be offset by increased emissions outside the EU from industries transferring production to countries where climate change policies are less stringent – an unintended carbon leakage. While some support the development of a CBAM to address carbon leakage in Australia, others query whether a combination of other policy measures for industries that face carbon leakage risks may be more appropriate in the current political climate.

First Nations Clean Energy Strategy Released

On 6 December 2024, the Federal Government released its first-ever First Nations Clean Energy Strategy 2024-2030 (**Strategy**).[22] Developed in consultation with First Nations, the Strategy provides a five-year national clean energy framework for governments, industries and communities to support First Nations people to self-determine how they participate in and benefit from Australia's clean energy transformation. The Strategy is designed to progress outcomes of the National Partnership Agreement on Closing the Gap through creating opportunities for self-determined participation in the clean energy transformation.

The Strategy is framed around three key goals, each with a set of objectives and priority areas for action:[23]

- **Power First Nations communities with clean energy:** investing in clean energy systems and removing obstacles that prevent First Nations communities from accessing a reliable and affordable clean energy supply. Investment will also be directed to research to fill important knowledge gaps and better understand First Nations peoples' experiences of energy use and access;
- **Enable equitable partnerships:** improving how industry and government engage and work with First Nations communities to achieve mutual benefits and recognise First Nations peoples' cultural heritage; and
- **Achieve economic benefits for First Nations peoples:** ensuring First Nations' voices are considered when developing clean energy policy and introducing changes to increase First Nations' ownership of energy projects. Support will also be provided to First Nations people to enable them to join the clean energy workforce and access funding for their own clean energy projects.

The Australian Government has announced that it is working with States and Territories to develop a plan to support the roll-out of the Strategy in each jurisdiction and guide the reform of Australia's energy system.[24]

The Strategy's four goals will play a crucial role in guiding industry on best practice and fostering meaningful partnerships with local Traditional Owners and First Nations communities. First Nations peoples and businesses across industry have demonstrated that working together, meaningfully and where possible, in partnership, leads to better localised opportunities and outcomes for communities and businesses – a key stepping stone to a just clean energy transition.

"First Nations peoples and businesses across industry have demonstrated that working together, meaningfully and where possible, in partnership, leads to better localised opportunities and outcomes for communities and businesses."

Aviation sector spotlight

Scaling up investment in sustainable aviation fuels

Aviation is widely recognised as a hard to abate sector – not least in a country as dependent on air travel as Australia. In recent years, sustainable aviation fuel (**SAF**) has emerged as an alternative renewable or waste-derived aviation fuel that meets sustainability criteria which could significantly reduce CO_2 emissions across the aviation sector.[25] SAF can be produced from a number of feedstock sources including waste oil and fats, green and municipal waste and non-food crops. The International Air Transport Association estimates that SAF could contribute around 65% of the reduction in emissions required by aviation to reach net zero CO_2 emissions by 2050.[26]

However, SAF is still at an early stage of development and technology. In some instances, reliance on the use of SAF by airlines to substantiate climate commitments has been subject to scrutiny and greenwashing claims due to allegations that there is insufficient supply of SAF for the claimed reliance to meet climate commitments in the medium to long term.[27]

Australia's support for SAF

The Australian Government has confirmed its support for the development and scaling up of SAF as an emissions reducing alternative for the aviation sector. In August 2024, the Government released its 'Aviation White Paper' which discussed, amongst other things, the use of SAF in Australia using Australian feedstocks and the Government's commitment to fast-tracking support for SAF to enable the aviation sector to contribute to net zero by 2050 targets.[28] Notably, the Government has committed to developing a certification scheme to verify the emissions from the production of SAF, undertaking consultation on the costs and benefits of options for a production incentive and demand-side measures and providing access to the $1.7 billion Future Made in Australia Innovation Fund to support the development of SAF.[29]

In line with these recent commitments, on 17 December 2024, the Australian Government announced that ARENA will provide a total of $14.1 million in funding to Ampol and GrainCorp for separate studies to develop SAF opportunities for Australia's airline industry. These projects represent an important step towards developing a pipeline of projects that could support the reduction of aviation sector emissions.[30]

The two projects receiving investment are:[31]

— the 'Brisbane Renewable Fuels Pre-FEED Study' which will investigate developing a renewable fuels facility of greater than 450ML per annum for SAF and renewable diesel production at the company's Lytton refinery – an amount equivalent to almost 5% of 2019 fossil jet fuel consumption; and

— the 'SAF Oilseed Crushing Facility Pre-Deployment Study' to investigate the establishment of an oilseed crushing facility that, in alignment with GrainCorp's feasibility assessment, may produce a minimum of 330kt per annum of canola oil as a feedstock input for SAF production – an amount representing approximately 12% of canola exported from Australia in the last year.

"Aviation is widely recognised as a hard to abate sector – not least in a country as dependent on air travel as Australia."

Australian businesses directly or indirectly involved in the aviation industry should closely follow the Government's funding of SAF development projects and monitor for related policy announcements. The outcomes of these projects and any corresponding policy announcements could have significant implications for businesses directly or indirectly reliant on aviation.

Support for SAF in the global market

Effective from 1 January 2025, the European Union (**EU**) and United Kingdom (**UK**) have taken a significant step to provide certainty to the development of SAF, introducing mandatory targets for the use of SAF which aviation fuel suppliers, aircraft operators and airports will have to comply with.

In the UK, the SAF Mandate requires 2% of total UK jet fuel demand in the UK in 2025 to be SAF, increasing incrementally to 10% in 2030 and to 22% in 2040.[32] Civil penalties may be imposed in certain cases of non-compliance with the requirements of the SAF Mandate.[33] Similarly, the EU's ReFuelEU Aviation initiative mandates a minimum share of SAF in EU airports, starting at 2% in 2025, and increasing to 70% in 2050.[34] Penalties for non-compliance will be imposed, proportionate to the environmental damage caused.[35]

While this marks a significant regulatory shift to commit to the development of SAF and reduce emissions from the aviation sector, some have expressed concerns that the aviation industry is not prepared to meet the deadlines due to the limited availability of SAF.[36] This shortfall raises questions about feasibility, particularly as SAF is significantly more expensive than conventional jet fuel. The success of these mandates will depend on strict enforcement, industry adaptation and increased investment in SAF production capacity. With governments in other jurisdictions, including Australia, announcing their commitment to and investing in the development of SAF, we may see similar SAF mandates rolled out in other jurisdictions.

Commencement of CORSIA in Australia from 1 January 2025

What is CORSIA?

Adopted by the International Civil Aviation Organisation (**ICAO**) in 2016, the Carbon Offsetting and Reduction Scheme for International Aviation (**CORSIA**) is a global market-based measure for aviation emissions designed to cap CO_2 emissions from international aviation at a global baseline from 2019.[37] An airline operating international flights between CORSIA-participating States is required to make an annual emissions report on its CO_2 emissions from the flights and submit that report to the State authority where the airline is based. Any growth in CO_2 emissions above the baseline of 85% of 2019 emissions levels is required to be offset by the airline through the purchase and retire of CORSIA-eligible carbon credits. If SAF that is compliant with CORSIA's sustainability criteria is used on the flights, this can also be claimed as CORSIA-eligible fuel to reduce the airline's emissions offset obligation. There are currently six CORSIA Eligible Emissions Units approved for use in 2024 to 2026 First Phase: American Carbon Registry Emission Reduction Tonnes, Architecture for REDD+ Transactions Credits, Climate Action Reserve Tonnes, Global Carbon Council Approved Carbon Credits, Gold Standard Verified Emissions Reductions and Verified Carbon Standard Verified Carbon Units.[38]

The CORSIA scheme is being implemented in three phases: a Pilot Phase from 2021 to 2023, a First Phase from 2024 to 2026 and a Second Phase from 2027 to 2035. For the first two phases, participation is voluntary on an opt-in basis, such that CORSIA obligations will only apply to international flights between States that have volunteered to participate. International flights to and from States that have not volunteered to participate will be exempt from CORSIA obligations.

From 2027 onwards, participation will be mandatory, based on 2018 revenue tonne kilometres data.[39] On this basis, most international flights will be covered except for some least developed countries or small island developing States that have not opted-in to participate.

Implications for Australian international airlines and business

Australia has been a participant in CORSIA since its inception, with CORSIA-regulated Australian operators monitoring, verifying and reporting emissions under CORSIA since 2019, to determine baseline emissions.[40] Operators are covered by the CORSIA monitoring requirements (and will be covered by the offsetting requirements) where they produce annual CO_2 emissions greater than 10,000 tonnes from the use of aeroplane(s) with a maximum certificated take-off mass greater than 5,700kg conducting international flights. During the Pilot Phase and First Phase, the monitoring, reporting and verification requirements and, if applicable, offsetting obligations apply to operators flying between States that have opted in to participate. Australia is one of the 129 States that have elected to participate in the CORSIA First Phase from 1 January 2025.[41]

This means that from 1 January 2025, all international flights between Australia and another CORSIA-participating State will be subject to the CORSIA monitoring, reporting and verification and, where their emissions exceed the 85% of their 2019 baseline, offsetting requirements. For flights between Australia and a non-participating State, only the monitoring, reporting and verification requirements will apply during the First Phase.

Australian airlines are required to report their CORSIA data to the Commonwealth Department of Infrastructure, Transport, Regional Development, Communications and the Arts. This includes data on the cancellation of CORSIA credits for a given compliance period. The deadline for reporting CORSIA credit cancellations from the First Phase is in early 2028.

For CORSIA-regulated operators, it is critical that processes are in place to ensure compliance with the monitoring, recording and verification requirements and, where triggered, offsetting requirements. For business generally, the CORSIA scheme is anticipated to significantly increase demand for high quality CORSIA-compliant carbon credits over the coming compliance periods, ultimately placing upward pressure on price. According to modelling by MSCI Carbon Markets, CORSIA-eligible carbon credits could cost between $18 to $51 per tonne of carbon dioxide equivalent during Phase I, rising to $27 to $91 in Phase II. If airlines pass these costs on to consumers, international ticket prices could increase by 0.5%–1.0% in Phase I.[42]

Greenwashing complaint to the ACCC

On 16 October 2024, Climate Integrity, a net-zero focused not-for-profit advocacy group, submitted a complaint to the Australian Competition and Consumer Commission (**ACCC**) in respect of Qantas Airways Limited (**Qantas**)'s allegedly misleading sustainability statements and net zero claims (**Complaint**). Specifically, Climate Integrity has requested the ACCC to investigate whether certain statements made by Qantas about the sustainability of its business and its plan to achieve net zero emissions by 2050 amount to misleading and deceptive conduct and/or misleading representations in breach of sections 18 and/or 29 of the Australian Consumer Law (**ACL**).[43]

The Complaint points the ACCC to the specific statements made by Qantas on its website, which it alleges are directed at promoting, directly or indirectly, the positive environmental and climate impacts of Qantas' business and plans to reduce its greenhouse gas emissions (collectively, the **Statements**). These statements include 'Net zero emissions by 2050', 'Fly Carbon Neutral', 'Travelling responsibly' and 'Your contributions are used to purchase carbon offsets from accredited, high-integrity projects worldwide'.

The Complaint alleges that the Statements misleadingly represent that Qantas' services are sustainable and do not have a significant adverse environmental or climate impact and/or that Qantas has a net zero plan aligned with the Paris Agreement and a reasonable basis for achieving net zero emissions by 2050. The Complaint emphasises that Qantas' repeated use of the term 'Sustainability' is incongruous with its current and likely future emissions given its long-term reliance on fossil fuels and that its emissions reduction measures are insufficient to achieve its net zero targets.

Within the Complaint, Climate Integrity refers the ACCC to the ruling of the District Court of Amsterdam against Dutch Airline KLM for engaging in misleading greenwashing behaviour. In this case, KLM had made various sustainability statements including that customers could 'create a more sustainable future together with [us]c and that KLM is 'moving towards sustainable travel together'. When a customer purchased a ticket online, they were presented the option to 'offset' and 'reduce' his/her impact, with a product advertised as 'CO2ZERO'. The Court concluded that KLM made environmental claims that are based on 'vague and general statements about environmental benefits, thereby misleading consumers'.

The Complaint against Qantas is now with the ACCC for review and assessment as to the appropriate next steps, including whether there are substantiated grounds for a proper investigation. While it remains to be seen how the ACCC will respond to this Complaint, it demonstrates that businesses sustainability claims are being increasingly subject to rigour assessment and review against the protections under ACL.

Greenwashing continues to be a top regulatory enforcement priority for the ACCC for a third year in a row, as well as for the Australian Securities and Investment Commission (**ASIC**). On 20 February 2025, the ACCC announced its regulatory enforcement priorities for 2025 to 2026 which include a spotlight on competition and consumer issues in the aviation sector.[44]

/ **DEEP DIVE**

Just Transition

In the years following adoption of the Paris Agreement, we have seen increasing focus on 'just transition' – a term that essentially encapsulates the concept of ensuring that the transition to net zero emissions and climate resilience is orderly, inclusive and just, creates decent work opportunities and leaves no-one behind.[45]

In practice, this is intended to ensure that the benefits and costs of the energy transition should be shared fairly across people and communities, with the hope of reducing social and political friction. Accordingly, key focuses of a just transition include encouraging new regional industry development, creating local jobs, reducing pollution, lowering costs, and benefit sharing for Indigenous peoples and local communities.

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Law and policy developments at an international, regional and domestic level demonstrate that just transition is a significant focus for the international community. These developments will present new challenges and opportunities for businesses, particularly those working in energy and extractive industries at the forefront of the energy transition.

International developments

The concept of just transition emerged from United Nations Framework Convention on Climate Change (**UNFCCC**) consideration of the impacts of 'response measures' and was first referenced in the Cancún Agreements at COP16 in 2010 in that context.[46] The term 'response measures' is used to describe the impacts arising from nations implementing climate mitigation policies, programmes and actions unilaterally, bilaterally or multilaterally. The most prominent examples include an emissions trading scheme (**ETS**), carbon taxes and levies, and more recently, carbon border adjustment mechanisms (**CBAMs**).[47]

At COP27 in Sharm el-Sheikh, nations agreed to establish a work programme on just transition to discuss pathways to achieve the goals of the Paris Agreement. At COP28 in Dubai, work on the just transition programme continued as nations defined and adopted the programme's objectives and focus areas, which include exploring opportunities, challenges and barriers relating to sustainable development and poverty eradication as part of transitions globally to low emissions and climate resilience and ensuring just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities.

In addition, a landmark decision was adopted at COP28 that calls on nations to contribute to a range of global efforts that are particularly relevant to the just transition. Significantly, the decision calls out the need to triple renewable energy capacity by 2030, accelerate efforts towards the phase-down of unabated coal power, transition away from fossil fuels in energy systems, and phase out inefficient fossil fuel subsidies.

Reflective of the focus of just transition to share the benefits of the just transition fairly, the decision recognised that nations should contribute to these efforts in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches.

At COP29 last year, just transition was an area of focus, particularly for developing countries and civil society. Despite this, COP29 concluded without reaching agreement on the formal just transition negotiation stream. However, nations did agree to discuss the 'cross-border impacts' of 'measures taken to combat' climate change as part of future response measures negotiations. This means that trade-related climate measures (such as CBAMs, and the EU's new Deforestation Regulation) have a dedicated place among negotiations at future COPs.

Domestic just transition measures

In response to climate change and the need to achieve emissions reductions across all sectors, several nations around the world are implementing climate mitigation policies, programmes and actions that could have implications for the just transition. This is reflected in analysis from the UN Development Programme which revealed that, as of 31 October 2022, 'just transition principles are now reflected in 38% of NDCs, 56% of LT-LEDS, and a growing number of high-profile global initiatives'.[48]

The growing focus on just transition by governments sends a clear signal that sustainable business practice requires that attention be given to transition planning. Businesses with material footprints relating to climate, energy and the environment must manage stakeholder expectations and businesses successful in light of an evolving regulatory landscape. Often just transition measures focus on climate, energy and environmental policy, but impacts on employment, education and communities must also be addressed.

Australia is taking steps to ensure the just transition of the workforce and the creation of decent work and quality jobs as part of the energy transition, having recently established the Net Zero Economy Authority (NZEA) under the *Net Zero Economy Authority Act 2024* (Cth) (**NZEA Act**).

The NZEA is charged with promoting the orderly and positive net zero economic transformation for Australia, its regions, industries, workers and communities. Its functions include catalysing investment in new industries and jobs, particularly in emissions-intensive regions, supporting workers impacted by net zero transition, helping coordinate policy and program design, and building community understanding, confidence and engagement with net zero economic transformation.

Just transition considerations for businesses

There is a growing international momentum around just transition that is contributing to evolved expectations on businesses to implement appropriate transition planning. Increasingly businesses are expected to disclose their impacts and make a plan for decarbonising their options and adapting to a net zero future. The establishment and implementation of new climate change response measures by decision makers will have implications for business, particularly if transition planning and adaptation measures become mandatory or expected. Investors are also playing a key role in calling for transformation to business practices. In this context, the Investor Group on Climate Change (**IGCC**) published a report titled 'Investor Expectations for Corporate Just Transition Planning' in November 2024.[49] This report:

- provides a framework for investors to evaluate and engage with companies on developing and implementing just transition plans;
- identifies practical tools and criteria for investors to assess the quality and scope of just transition plans; and
- highlights that integrating just transition principles into corporate transition planning will help mitigate economic risks, support sustainable practices and protect long-term financial returns.

It is clear that businesses in emissions intensive sectors must build the concept of just transition into their decarbonisation strategies, and the guidance from international developments indicates the breadth of the considerations that businesses should take into account when considering how they will support the transition not only of workers but also of communities in fossil-fuel dependent regions.

Carbon market developments

Improved outlook for carbon markets for 2025

Following the full operationalisation of international carbon markets under Article 6 at COP29, expectations for carbon markets for 2025 are looking a bit more positive. This is a timely development, following a relatively stagnant market over 2023 and 2024. According to a report of American finance company Morgan Stanley Capital International (**MSCI**), the overall valuation of the voluntary carbon market remained stagnant in 2024 compared to 2023 levels at around $1.4 billion, as did the number of retirements, being the measure of overall demand in the market.[50] However, the MSCI report recorded a steady growth in the volume of distinct buyers in the market for 2024.[51]

RepuTex's carbon weekly reports for January 2025 record that the Australian carbon market opened strong in 2025 with total weekly volumes across spot and derivative markets sitting well above the rolling 12-month weekly average, led by robust spot trading.[52] Subsequent media scrutiny into the ACCU Market, and the Government's Climate Active certification, pushed prices down in February 2025.[53] However, looking ahead, RepuTex expect further activity as entities continue to prepare for upcoming compliance deadlines.

In a similar vein, the MSCI report also expects positive growth over the coming years, due to the continuing increase in the number of companies setting ambitious climate targets, including those to be met by 2030, and positive policy and market developments.[54] The MSCI report states that 'the market could rise significantly in the coming years, creating potential new investment opportunities'. MSCI's projections suggest that the market could be worth anywhere between USD 7 billion to USD 35 billion by 2030 and USD 45 billion to USD 250 billion by 2050.[55]

The relatively stagnant carbon market over the past few years has been a product of various factors, including concerns around integrity and greenwashing and changing political climates putting downward pressure on demand. In an effort to address integrity issues in particular, various guidelines for high integrity credits have been published by leading international organisations and governments, and the ICAO Council started approving emissions units as CORSIA-compliant. See the carbon market developments update in our Sustainability Insights Issue 5 for further details on guidelines and frameworks for high integrity credits released during 2024.

In November 2024, during COP29, the United Kingdom published its principles for Voluntary Carbon and Nature Market integrity, setting out ICVCM-aligned principles as a guide for unlocking high integrity markets (**VCNM Principles**).[56] The VCNM Principles are designed to support organisations engaged in discretionary action towards net zero and nature positive transitions. The VCNM Principles include:

— use credits in addition to ambitious actions within value changes;
— use high integrity credits that are independently validated and verified;
— measure and disclose the planned use of credits within sustainability reporting;
— use best practice guidance to plan ahead and to set and disclose targets;
— make accurate and validated environmental claims using appropriate terminology; and
— cooperate with other market participants to support the growth of high integrity markets.

Three new REDD+ carbon crediting methodologies were approved by the Integrity Council for the Voluntary Carbon Market (ICVCM) for Core Carbon Principle (CCP) alignment in November 2024. No credits have yet been issued under the recently approved methodologies; however, there is a large volume of credits in development across 17 jurisdictions.[57] The REDD+ credits from the approved methodologies are expected to be labelled with the CCP label early this year, further growing demand in the voluntary carbon market.[58]

These recent announcements and initiatives with respect to voluntary carbon markets are intended to enhance confidence and demand within the voluntary carbon market, encouraging a positive outlook for the market for 2025. This creates more opportunities for businesses to invest in the carbon market and carbon credits and to do so in a manner that aligns with best practice and supports high integrity markets. This is particularly important in the context of political uncertainty for climate policy and initiatives. Many jurisdictions and corporations still have international commitments and domestic compliance obligations and will be increasingly demanding high integrity offsets to meet those commitments.

Consultation on unified accounting standards for environmental credits in the United States

On 17 December 2024, the Financial Accounting Standards Board (**FASB**), an independent not-for-profit accounting organisation, issued proposed Accounting Standards Update *Environmental Credits and Environmental Credit Obligations (Topic 818)* (**ASU**) on accounting standards for environmental credit programs, including carbon credits.[59] The proposed ASU includes standards for the recognition, measurement, presentation and disclosure requirements for compliance and voluntary programs generating environmental credits, including carbon credits. For example, requirements that environmental credits be accounted for based on the intended use of the credit, including whether they are likely to be used to settle an environmental obligation or be transacted.

If enacted, these disclosure requirements would apply for all US entities that purchase or hold environmental credits.[60] The proposed ASU addresses information reported in financial or sustainability statements and is designed to provide investors with additional information by improving:[61]

- the comprehensibility of financial accounting and reporting information about environmental credits and environmental credit obligations; and
- the comparability of that information by reducing diversity in disclosure practices.

The FASB's intention is to standardise accounting practices for US companies participating in compliance and voluntary environmental markets, addressing the current lack of accounting rules or generally accepted accounting principles applicable to environmental market transactions in the US.[62]

The proposed ASU is anticipated to have a wide-ranging impact, given the significant number of companies operating under emission regulations and acquiring environmental credits to meet climate commitments.

If the ASU is implemented as proposed, US companies will need robust processes and controls in place to record usage, and intention of usage, of environmental credits, given the potential impact of changes in intent on credit measurements. Given the significant number of US companies that issue and transact environmental credits, businesses globally are likely to be indirectly impacted by the updated standards, once finalised by the FASB.

Reforms to enhance transparency in the ACCU market

On 9 January 2023, the final report of the independent review into the integrity of Australian Carbon Credit Units (**ACCUs**) and Australia's carbon crediting framework was released (the Chubb Review).[63] The Chubb Review concluded that the ACCU scheme is fundamentally sound; however, that there is room for further improvement, and made 16 recommendations to address this. The recommendations centred around changes to improve transparency, clarify governance processes, facilitate positive project outcomes and co-benefits, and to enhance confidence in the effectiveness and integrity of the ACCU Scheme. The Government agreed in principle to all 16 of the Review's recommendations[64] and has since been consulting with stakeholders on the implementation of the Review's recommendations.

Most recently, the Minister amended the Carbon Credits (Carbon Farming Initiative) Rule (2015) 2023 (Cth) to implement one of the recommendations of the Chubb Review that transparency and access to data be improved to enhance public trust in the ACCU Scheme.[65] The Carbon Credits (Carbon Farming Initiative) Amendment (2024 measures No. 2) Rules 2024 (Amendment Rule) came into effect on 20 December 2024.[66]

The Amendment Rule requires additional data and information on the ACCU Scheme to be published on the Clean Energy Regulator's website.

The information will be made available in the existing Emissions Reduction Fund Register on the Clean Energy Regulator's website, and includes:[67]

- detailed information on eligible offsets project activities;
- any suppression mechanisms identified in the baseline period relating to the project;
- details of the estimation or measurement approach used to calculate carbon abatement;
- project crediting period start and end dates;
- the project permanence period start date; and
- the names of all agents authorised or any other person who is significantly involved in a project's registration or administration.

An application for non-publication can be made to the Regulator in the following circumstances:[68]

- where non-publication is required to protect or respect Aboriginal tradition; and
- publication of the information may threaten, damage or cause harm to a threatened ecological community or threatened species.

The Amendment Rule is part of the Government's larger suite of reforms to enhance the integrity and credibility of the ACCU Scheme. As emphasised in the Explanatory Memorandum accompanying the Amendment Rule:[69]

> *'Greater transparency, achieved through publishing additional information, is intended to make the scheme more effective at achieving its objects to reduce carbon emissions and comply with Australia's international climate change commitments and reporting obligations'.*

Participants in the ACCU Scheme should familiarise themselves with the new requirements under the Amendment Rule and ensure they have processes in place to compile and disclose the necessary information. Businesses should also continue to monitor the Government's ongoing consultation with respect to broader reforms to the ACCU Scheme and, once announced, assess how these may impact their current and future participation in the ACCU Scheme.

Greenwashing developments

ACCC releases final guidance on sustainability collaborations

On 18 December 2024, the ACCC released its final guide on sustainability collaborations and Australian competition law (ACCC Guide), following public consultation on a draft guide earlier in the year.[88]

The ACCC Guide seeks to assist businesses by:

- providing guidance on the competition law risks that may arise in relation to sustainability collaborations under the *Competition and Consumer Act 2010* (Cth);
- explaining how exemptions from competition law through the ACCC authorisation process may be available for sustainability collaborations that are in the public interest; and
- providing practical tips for applying for authorisation, as well as a number of both historical examples and hypothetical case studies, providing more concrete guidance for businesses as to best practice.

What are sustainability collaborations?

The ACCC Guide defines 'sustainability collaborations' as discussions, agreements or other practices amongst businesses aimed at preventing, reducing or mitigating the adverse impact that economic activities have on the environment.

The ACCC guide identifies that sustainability collaborations may risk amounting to:

- cartel conduct (where two businesses that compete for the supply or acquisition of goods or services agree to act together, rather than competing); or
- other contracts, arrangements or understandings, or concerted practices, or exclusive dealings, which have the purpose, effect, or likely effect, of substantially lessening competition.

The ACCC Guide notes, by way of example of behaviour that may constitute cartel conduct, businesses that compete to acquire certain types of input agree to only buy the inputs from suppliers that meet particular sustainability criteria. In contrast, the ACCC Guide notes as an example of a low-risk sustainability collaboration, an industry-wide emissions reduction target or jointly funded research into reducing environmental impacts.

The ACCC Guide also identifies other anti-competitive practices that have the purpose, effect or likely effect of substantially lessening competition in a market. By way of example, the Guide notes that a sustainability collaboration is more likely to substantially lessen competition where it prevents businesses from competing effectively or involves the sharing of commercially sensitive information. In contrast, a sustainability collaboration is less likely to substantially lessen competition where the businesses involved do not have a significant market presence or are not competitors in terms of selling or buying goods or services.

Scope for exemptions from competition law

The ACCC Guide states that for collaborations which may breach the prohibitions on anti-competitive practices, the ACCC may grant an authorisation if it is satisfied that the collaboration would result in a net public benefit, taking into consideration environmental and sustainability benefits. There are a number of exceptions in the Competition and Consumer Act and if any of these apply, the sustainability collaboration will not breach the prohibitions on cartel conduct or other key anti-competitive practices.

The ACCC Guide includes, as examples of conduct that the ACCC may authorise, an agreement to not use plastic wrap on products, the joint development of technology with environmental benefits or the sharing of information and coordination activities to reduce food waste.

The ACCC has already authorised a wide range of conduct which has led to sustainability-related public benefits. This guide is an important framework for how businesses collaborate in reducing the adverse impacts of economic activities on the environment and pursuing positive sustainability outcomes.

ACCC v Clorox

On 18 April 2024, the ACCC commenced its first greenwashing regulatory proceedings in the Federal Court of Australia against Clorox Australia Pty Ltd (**Clorox**) for allegedly making false or misleading representations that its GLAD branded kitchen tidy and garbage bags are made of '50% ocean plastic recycled' in violation of the Australian Consumer Law (**ACL**). See our Knowledge Insight *Not so glad to be green: ACCC commences first Federal Court case on greenwashing* for further details on the ACCC's claims.

On 7 February 2025, the matter was heard in the Federal Court. At the hearing, Clorox admitted the contraventions and the parties agreed to a proposed penalty of $8.25 million for contraventions of s 29(1)(a) and (g) of the ACL.

In reaching the agreed penalty, the following were considered aggravating factors:

- **Nature and duration of the contravention:** The representations occurred over a two-year period and were made on over 2.2 million products;
- The representations were made very clearly as to the claimed environmental benefits;
- **Financial position:** Clorox is part of a large publicly listed US-based group. A substantial penalty is justified to achieve deterrence;
- **Involvement of senior management:** Senior management had a concern as to whether to be upfront about the use of 'ocean bound plastic' but the change wasn't made prior to the launch because the packaging would need to be changed. It was later changed after the launch, but the headline 'ocean bound plastic' remained;
- **Nature and extent of loss or damage suffered:** If consumers are denied the opportunity to make informed purchasing decisions, suppliers are also put at a competitive disadvantage; and
- **Benefit derived:** Clorox earned revenues and profits and gained a competitive advantage over other suppliers by engaging in the conduct.

There were also mitigating factors that reduced the agreed penalty, including:

- **No deliberate strategy to mislead consumers:** Clorox had intended to deliver environmental benefits but subsequently discovered through its supplier that the intended benefits were not necessarily in the product; and
- **No previous similar conduct:** Clorox did not have any prior contraventions and cooperated with the ACCC at an early stage and throughout the proceedings, and discontinued the products in July 2023 following the commencement of the ACCC investigation.

In addition to the proposed penalty discussed above, the parties also sought injunctive relief, orders for a compliance program to be implemented by Clorox Australia, and orders that Clorox Australia publish a correction notice.

This case is yet another instance serving as an important reminder to businesses that greenwashing practices can carry significant financial penalties. We expect the ACCC to continue its focus on holding businesses accountable for making accurate environmental claims, through its investigative and enforcement powers, with greenwashing remaining an enforcement priority for the regulator for 2025 to 2026.

ACCR v Santos Federal Court Hearing

On 18 November 2024, the three-week hearing for Australasian Centre for Corporate Responsibility v Santos commenced in the Federal Court of Australia.[89]

After being adjourned part-heard, the hearing concluded on 6 December 2024. This is the first case in Australia challenging a company's net zero emissions claims under the ACL.

The proceedings have been brought by the Australasian Centre for Corporate Responsibility (ACCR), 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, in contravention of ss 18 and 33 of the ACL, and s 1041H(1) of the *Corporations Act 2001* (Cth) (CA). The ACCR alleges that Santos engaged in misleading or deceptive conduct relating to its 'clean energy' claims and its net zero plan in its 2020 annual report, during a Santos investor day briefing and in its 2021 Climate Change Report, and that Santos made misleading claims about having a clear and credible plan to achieve net zero emissions by 2040.

The ACCR's overall submission during the hearing was that Santos lacked reasonable grounds for announcing its net zero targets, such that Santos had no tangible pathway for achieving net zero and that its plan was little more than 'speculation cobbled together in weeks … attended by no proper process or modelling'.

Throughout the hearing, Santos maintained that it rejects the allegations, submitting in response that it has disclosed sufficient information about its material carbon emissions and a transition roadmap, and that the material should be understood in the context of the industry and the relevant audience of the Santos Annual Report. Santos submitted that Australia's commitment to the Paris Agreement includes the use of offsets and that the use of descriptive words such as 'clean' was in a relative sense and appropriate for the industry at the time. With the hearing concluding on 6 December 2024, judgement is likely to be delivered by mid-2025.

The Court's findings in these proceedings will have significant implications for the way businesses make net zero emissions target claims and other sustainability statements and clarifying what types of statements may breach the ACL. We also expect the judgement to shed light on what constitutes sufficient evidence for a 'reasonable basis' for making representations about future matters and what might be the appropriate definition of net zero.

Sustainability Reporting and Governance updates

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Mandatory climate-related financial disclosure commenced 1 January 2025

On 17 September 2024, the Australian Government amended the *Corporations Act 2001* (Cth) (**Corporations Act**) to implement the highly anticipated mandatory climate-related financial disclosure regime in Australia (**Climate Disclosure Regime**).[70] In Sustainability Insights Issue 5, we provided a comprehensive overview on the requirements of the proposed Climate Disclosure Regime.

Reporting requirements have since commenced for the largest reporting entities and several standards and regulatory guides have been issued to assist reporting entities.

On 1 January 2025, the Climate Disclosure Regime commenced for Group 1 entities, with annual sustainability reports to be prepared alongside Chapter 2M financial reports. Other in-scope entities will be progressively phased in to reporting obligations up to 1 July 2027:

Standards and Guidance

Since the enactment of the Climate Disclosure Regime, accompanying standards and reporting guidance have been issued in draft or final form by relevant standards boards and regulators.

On 20 September 2024, the Australian Sustainability Reporting Standards (**ASRS**) released the final Australian Accounting Standards Boards (**AASB**) mandatory standards for Climate-related Disclosures (**AASB S2**), prescribing the content that reporting entities will be required to include in the climate statements of their sustainability reports.[71] See Gilbert + Tobin's AASB S2 Disclosure Checklist and 'Cheat-sheet' Checklist for a comprehensive overview of the disclosure requirements.

On 7 November 2024, ASIC released its draft regulatory guidance on the sustainability reporting regime for consultation.[72] The draft guidance addresses who must prepare a sustainability report, how the regime will interact with existing legal obligations and how ASIC intends to administer the regime.

The guidance also addresses the substantive content of the sustainability report and sustainability-related disclosures outside the sustainability report. Feedback on the regulatory guidance concluded on 19 December 2024, with ASIC now deliberating and expected to issue its final guidance early this year.

On 28 January 2025, the Auditing and Assurance Standard Board (**AUASB**) approved the adoption of the final Australian Sustainability Assurance Standards (**ASSA**).[73] The *ASSA 5000 General Requirements for Sustainability Assurance Engagements* (**ASSA 5000**) is the Australian equivalent of the international standards ISSA 500 General Requirements for Sustainability Assurance Engagements and will apply to sustainability assurance engagements for reporting periods beginning on or after 1 January 2025. The *ASSA 5010 Timeline for Audits and Reviews of Information in Sustainability Reports under the Corporations Act 2001* (**ASSA 5010**) sets a timeline for the phasing in of limited and reasonable assurance and when information in a sustainability report prepared in accordance with the Corporations Act will be subject to audit, review or both. There are no changes to the assurance phasing model previously approved in the Exposure Draft Assurance Standards.

Preparing for reporting

All in-scope reporting entities should be compiling relevant data and metrics and information on their governance, climate strategy and risk management required under the Corporations Act and the AASB S2 in preparation for their first sustainability report. For many Group 1 reporting entities, their first reporting period has already commenced. For these larger entities, reporting capabilities will likely already be somewhat sophisticated, due to other existing mandatory or voluntary reporting.

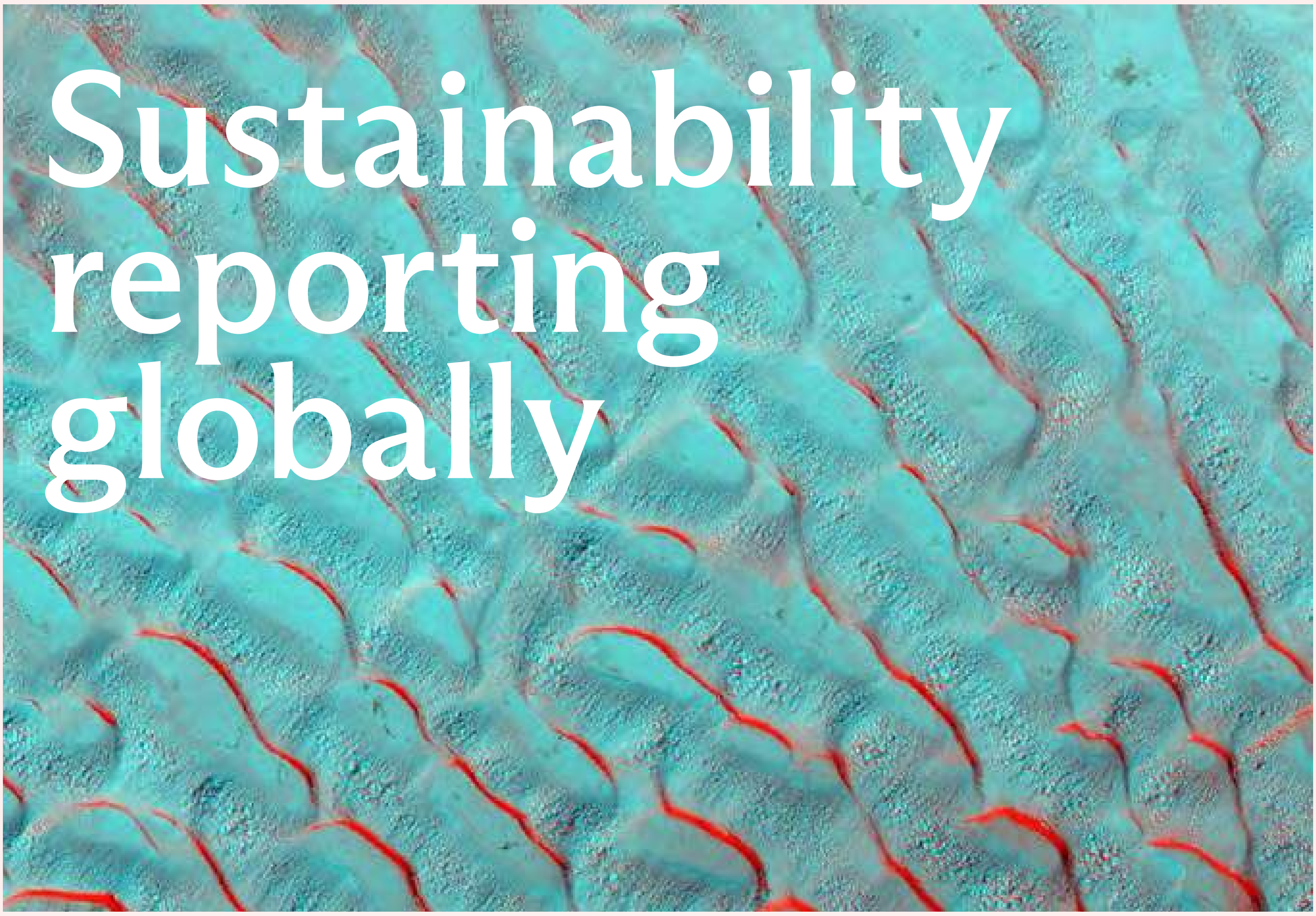
However, for those businesses with less mature reporting capabilities, who may be captured within the second or third group of reporting entities, or requested to provide data to an upstream reporting entity, now is the time to be closely reviewing the requirements under the AASB S2 and ASIC regulatory guidance and developing the necessary internal capabilities to be able to comply with the regime and/or provide sufficient information to other reporting entities within their value chain.

In Sustainability Insights Issue 5, we provided comprehensive guidance and practical tips on how to prepare for reporting under the Climate Disclosure Regime.

ENTITY	ENTITY AND THEIR CONTROLLED ENTITIES MEET AT LEAST TWO OF THE THREE:			REPORT FROM FIRST REPORTING YEAR COMMENCING ON OR AFTER
	Financial year consolidated revenue	**End of financial year consolidated gross assets**	**End of financial year full-time equivalent employees**	
GROUP ONE				
Large entities	$500m or more	$1bn or more	500 or more	**1 January 2025**
National Greenhouse and Energy Reporting (NGER) entities	Above the publication threshold in s 13(1) of the NGER Act: 1. 50 kt $C0_2$-e Scope 1 and 2 emissions; 2. 200 TJ of energy produced; or 3. 200 TJ of energy consumed.			
GROUP TWO				
Large entities	$200m or more	$500m or more	250 or more	**1 July 2026**
NGER reporting entities	All other NGER reporting entities that do not meet the above NGER publication thresholds.			
Asset owners	N/A	$5 billion or more	N/A	
GROUP THREE				
Other entities	$50m or more	$25m or more	100 or more	**1 July 2027**

/ DISCLOSURE

Sustainability reporting globally



/ WORDS BY

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Mandatory sustainability disclosures are quickly becoming a global norm.

Reporting frameworks

Reporting frameworks aligned with the International Sustainability Standard Board (ISSB)'s International Financial Reporting Standards (IFRS) S1 and/or S2 have been implemented or are in the process of being adopted in more than 30 jurisdictions, representing over 40% of global market capitalisation.[74]

Reporting frameworks have already been introduced in key jurisdictions including the EU, Switzerland, Canada, Brazil, Australia, New Zealand, China, Hong Kong, Singapore and Malaysia and are in the process of being introduced in countries including India, Japan, South Korea and Mexico.[75]

30
jurisdictions have adopted the ISSB and IFRS Standards globally

40%
of Global Market capitalisation have adopted ISSB and IFRS Standards

$1b USD
US companies earning over $1bUSD annually are required to annually report their GHG emissions in 2026

There are various nuances between the regimes in each jurisdiction – including whether mandatory disclosure extends to the full scope of sustainability-related risks and opportunities, includes Scope 3 GHG emissions or an assessment of risk against double materiality standards. The EU remains at the forefront of sustainability reporting with its Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive, requiring both large EU and non-EU companies to report in accordance with the European Sustainability Reporting Standards and undertake due diligence of adverse human rights and environmental impacts.

On 12 December 2024, the EU also introduced a new Regulation on the transparency and integrity of ESG rating activities (**ESG Regulation**) intended to enhance the 'responsibility, reliability, good governance and independence of ESG rating activities' and enhance the sustainable finance agenda of the EU.[76]

The ESG Regulation applies to ESG rating providers established within and outside the EU, when they issue, publish and/or distribute their ESG ratings in certain circumstances. The Regulations provide, amongst other things, that these ESG ratings providers must be 'authorised and supervised by the European Securities and Markets Authority', use 'ratings methodologies … that are rigorous, systematic, independent and capable of justification and shall apply those rating methodologies continuously and in a transparent manner' and provide 'separate E, S and G ratings … rather than a single ESG rating that aggregates E, S and G factors'.[77] The Regulation entered into force on 1 January 2025 and will be applicable as of 2 July 2025.

On 18 December 2024, Canada published its Canadian Sustainability Disclosure Standards, aligned with both IFRS S1 and S2.[78] The United Kingdom Government has also reaffirmed its commitment to adopt UK Sustainability Reporting Standards closely aligned with the IFRS S1 and S2, to complement its Streamlined Energy and Carbon Reporting regime, with consultation on draft standards anticipated to commence in early 2025.[79]

The UK Financial Reporting Council has recommended that the UK adopt the ISSB IFRS S1 and S2 standards to align UK businesses with global sustainability practices.[80] In December 2024, the Swiss Government also commenced consultation on amendments to its Climate Disclosure Ordinance, which has been in force since 1 January 2024, to establish minimum requirements for transition plans and net-zero targets.[81]

In the US, the Securities and Exchange Commission (**SEC**)'s long-anticipated climate disclosure rules were first adopted in March 2024 (**SEC climate rules**).[82] However, the SEC stayed the climate rules in April 2024 pending the outcome of judicial review challenging the rules in the US Court of Appeals for the Eighth Circuit,[83] and most recently, indicated that it will be taking steps to roll back the proposed rules.[84] Despite the drawbacks at a Federal level, California has been taking a leading role in climate-related disclosures in the US. Enacted in October 2023, the *Climate Corporate Data Accountability Act* (SB 253)[85] requires US businesses with total annual revenues greater than USD 1 billion doing business in California to annually report their scope 1, 2 and 3 GHG emissions, with the first audited reports due in 2026. In addition, the *Climate-Related financial Risk Act* (SB 261)[86] requires large US businesses with annual revenues greater than USD 500 million operating in California to publicly disclose climate-related financial risks and their mitigation strategies on a bi-annual basis.

As of 1 January 2025, companies operating within California must also publicly disclose their voluntary carbon market participation and net-zero emissions claims pursuant to the *Voluntary Carbon Market Disclosures Act* also enacted in October 2023 (**VCMDA**).[87] Given California's scope of influence on the global economy, the climate-related and voluntary carbon market disclosure requirements will likely shape business practices well beyond the borders of the State. Especially where equivalent disclosure guidance is not yet available in other US states, companies may look to the California requirements for guidance on what disclosure should look like or may be required to look like in the future.

The integration of climate-related metrics into financial performance assessments will likely continue to deepen, with credit rating agencies, banks and insurers globally increasingly factoring ESG risks into their evaluations. This shift will drive greater accountability as companies are incentivised to align their sustainability goals with financial resilience.

/ DISCLOSURE

Emerging regulatory guidance for mandatory climate reporting

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BWD Strategic

Australia's mandatory climate reporting regime rolls on – for now.

In late 2024, corporate regulator ASIC commenced consultation on a draft regulatory guide for entities required to prepare a sustainability report under Chapter 2M of the Corporations Act. ASIC Consultation Paper 380 outlined the proposed guidance for the sustainability reporting regime and specific issues where ASIC sought market feedback.

Since then, climate reporting has become part of the election cycle, with the Coalition vowing that a future Coalition Government may abolish Group 3 (and even Group 2) entity requirements with a view to abolishing expensive and time-consuming 'green tape'.[90]

Despite this politicisation, reporting entities must continue preparing now to meet these sustainability reporting requirements – particularly those linked to international capital markets where these disclosures are becoming 'table stakes'.

(Terminology is a challenging part of these discussions, as we outline below. From here, we will refer to the mandatory sustainability report as a mandatory 'climate statement' to avoid any confusion.)

Our submission in response to ASIC's draft guidance focused on five aspects that warrant further development.

1 Agreed terms for and labelling of sustainability information

As seen in the both the accompanying legislation and AASB Sustainability Reporting Standards, we need to clarify the terminology for reported sustainability information aligned to AASB S2, and reported sustainability information aligned to other frameworks (such as GRI). Under the current ASRS definitions, only the former can be called the 'Sustainability Report'. We believe a universally agreed name for other sustainability information aligned to other frameworks is needed to help readers navigate and better understand this new Australian reporting landscape.

2 Content duplication risks

Entities would value further guidance to address risks of content duplication between the mandatory climate statement and the Operating and Financial Review (OFR). We envisage, for example, that reporting entities may choose to address material planned investments to mitigate short-term climate-related risks in the OFR, with not-yet-costed investments to address medium- and long-term risks only addressed in the sustainability report due to material uncertainties about their amount and timing.

Clearer guidance and education in this area will benefit both sections of the Annual Report, increasing the strategic value of reported information while avoiding unnecessary repetition or inadvertent inconsistency.

3 Potential 'hushing' impacts of modified liability setting

Modified liability settings[91] are included in the Standards to protect entities from litigation in response to certain types of protected statements included in the mandatory climate statement. This includes forward-looking statements while entity data set and maturity are evolving.

In our view, the modified liability settings reflected in the draft guidance will limit the use of protected statements by reporting entities outside of the mandatory climate statement.

We believe that *more* reporting entities need to engage their investors, employees, supply chain partners and stakeholders in understanding the climate-related risks and opportunities they face, and that information within the mandatory climate statement will be valuable to this process of engagement, education and discussion.

Limiting communication of information about climate-related financial risks and opportunities to the format of the mandatory climate statement seems unnecessarily restrictive. Indeed, ASIC inadvertently risks adding to the unfortunate and increasingly common trend of 'greenhushing', where company boards and senior executives direct their own sustainability, investor relations and corporate affairs teams to be less transparent and ambitious around climate strategy and disclosure.

Australia will be better served by a regulatory approach that rewards authenticity in relation to climate disclosure, rather than one that punishes good faith attempts to openly share views, data, and insights on the economic, social, technological and ecological challenges of supporting the transition.

4 Cross-referencing concerns

The draft guidance encourages cross-referencing to other documents from an entity's climate statement but 'strongly encourages' that all these referenced materials are lodged alongside the statement.

Entitles may be reluctant to include cross-references if this is the case. In our view, its outcome is the *reverse* of the standard's intention and would hinder primary users in understanding how the reporting entity's various disclosures connect to each other.

5 Transition plan guidance

Transition plans are a component of the AASB S2, yet international guidance and best practice is still developing in this area. Although the IFRS has acknowledged the Transition Plan Taskforce Disclosure Framework as complementary to the ISSB standards, Australian guidance would be useful for reporting entities creating transition plans that satisfy local requirements. This guidance could cover what entities should include in a transition plan, whether a transition plan covers decarbonising to net zero and adapting to physical risk, and the related Directors' duties.

Implications for reporting entities

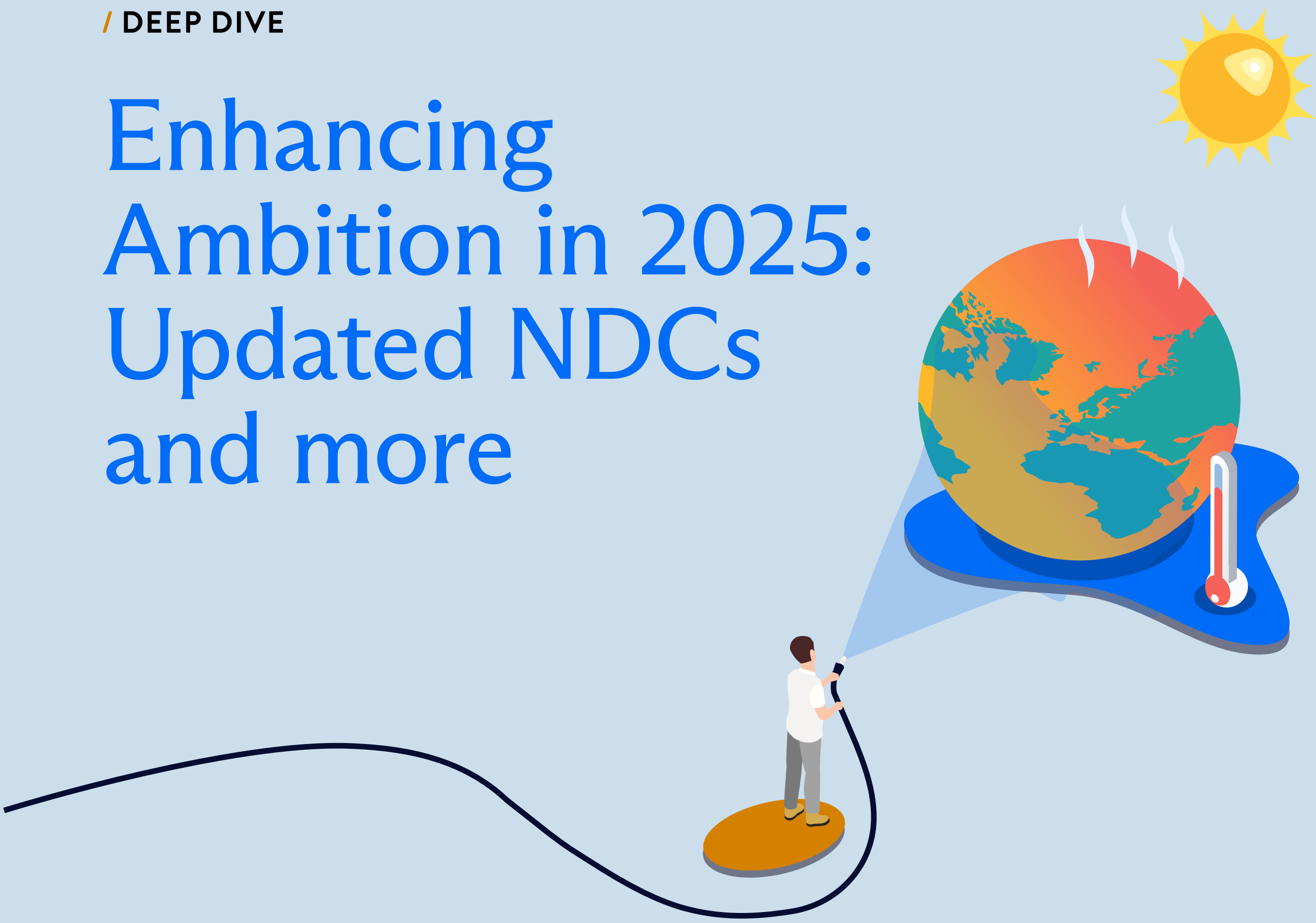
For reporting entities, there may be a tendency to sideline the more technical reporting issues like cross-referencing and the inclusion of climate-related information in the OFR, to instead prepare a compliance-focused, stand-alone climate statement that moves step by step through AASB S2. While this conservative approach is understandable, it misses the opportunity to maximise the value of your reporting.

Your shareholders, institutional investors, employees and other report readers will better understand your business strategy, and the potential impact of climate-related financial risks and opportunities, if you focus on communicating the strategic value of your climate-related information beyond compliance.

We would love to hear about how you're approaching AASB S2 reporting and how it can be better connected to your OFR, mandatory and voluntary sustainability information, as well as your views on ASIC Consultation 380. Please get in touch at susan@bwdstrategic.com.

/ DEEP DIVE

Enhancing Ambition in 2025: Updated NDCs and more



In 2015, the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) adopted the Paris Agreement with the goal to limit global warming to well below 2°C above pre-industrial levels, and preferably to 1.5°C.

Under the Paris Agreement, Parties are required to submit Nationally Determined Contributions (**NDCs**) every five years. NDCs detail each Party's commitment and plans to contribute to the long-term temperature goal of the Paris Agreement. The next round of NDCs, coined 'NDCs 3.0', are due in early 2025 and will detail Parties' climate actions through to 2035.

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The need for ambitious NDCs

The Paris Agreement requires each successive NDC to represent a 'progression' beyond the Parties' current commitments and reflect the highest possible effort. This approach is designed for continuous improvement and to encourage Parties to scale up their commitments in response to evolving circumstances, technological advancements, and the urgency of the climate crisis.

The urgency of scaling ambition is underscored by the findings of the first global stocktake, concluded at COP28 in 2023, which assessed collective progress towards the Paris Agreement's long-term goals. The first global stocktake found that while near-universal participation in the Paris Agreement has driven significant climate action, current efforts fall short of the required trajectory.[92] Additionally, the 2024 NDC Synthesis Report estimates that full implementation of all latest NDCs could lead to a 5.9% reduction in emissions by 2030 relative to 2019 levels. However, to limit warming to 1.5°C, GHG emissions need to decline by 60% by 2035. For a 2°C pathway, a 35% reduction is needed within the same timeframe.[93] NDCs 3.0 thus represent a pivotal opportunity to close the ambition gap and accelerate global progress toward net zero.

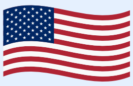
Informing NDCs 3.0

NDCs 3.0 will be informed by the outcomes of the first global stocktake, which highlighted key areas for improvement, including the need for more robust sectoral decarbonisation and strengthened climate finance. Further, advancements in renewable energy, and other low carbon technologies, present new avenues for enhancing commitments. National circumstances also remain critical, with developing countries requiring additional support to meet commitments.

FOUR COUNTRIES HAVE ALREADY SUBMITTED THEIR UPDATED NDCs:

Brazil has committed to reducing net GHG emissions by **59%** to **67% by 2025** relative to 2005 levels.[94]

United Arab Emirates (UAE) has committed to reducing net GHG emissions by **47% by 2035** from 2019 levels.[95]



United States of America has committed to reducing net GHG emissions by **61%** to **66% by 2035** relative to 2005 levels.[96]

Uruguay has set unconditional mitigation objectives for three GHGs, being not to exceed **9.267 $GgCO_2$, 818 $GcCH_4$** and **32 GgN_2O** by 2035.[97]

NDCs and Article 6

Parties have increasingly indicated their use of voluntary cooperation under Article 6 of the Paris Agreement, and with the final building blocks required to make Article 6 fully operational agreed upon at COP29, we expect this trend to continue. This can include engaging in cooperative approaches under Article 6.2 and engaging in the Paris Agreement Crediting Mechanism established by Article 6.4. Engagement in Article 6 can offer Parties the ability to facilitate cost-effective emissions reductions while supporting global mitigation efforts.

Australia's path to NDC 3.0

Australia's current NDC commits to a reduction in GHG emissions of 43% by 2030, relative to 2005 levels.[98] The *Climate Change Act 2022* (Cth) requires the Australian government to receive advice from the Climate Change Authority (**CCA**) before finalising and submitting its updated emissions reduction targets.

The CCA's advice, informed by the following four key pillars,[99] will play a pivotal role in shaping Australia's NDC 3.0:

1. **International considerations:** Including trade, foreign policy, and the approaches adopted by other countries.
2. **Wellbeing:** Including environmental impacts, regional impacts and First Nations issues.
3. **Sectoral pathways:** Including desktop analysis to understand sectoral decarbonisation pathways.
4. **Economic analysis:** Including examining opportunities and costs of different emission reduction pathways.

The CCA's recent reports – 2024 Sector Pathways Review[100] and 2024 Annual Progress Report[101] – will also inform the development of its NDC advice. In the Sector Pathways Review, the CCA reviewed the potential technology transitions and emission pathways that can best support Australia's transition to net zero and in the 2024 Annual Progress Report, the CCA found that while Australia's emissions are falling, it is not yet at the rate needed to meet Australia's current NDC target.

Business Implications of NDCs 3.0

NDCs 3.0 can have significant implications for businesses, especially in terms of regulatory and policy changes and the opportunities presented under Article 6 of the Paris Agreement.

As governments enhance climate policies to meet their updated NDC commitments, businesses can face stricter emissions standards, mandatory reporting of GHG emissions, as well as sector-specific regulations. These changes may necessitate investment in decarbonising technologies, changes in supply chains, and other operational adjustments.

As we expect more Parties to reference and utilise cooperative approaches under Article 6.2 of the Paris Agreement, there will be increasing opportunities for businesses to engage in international carbon markets. For example, businesses may partner with the participating Parties involved for the purpose of financing or implementing the mitigation activity and associated services.

/ NATURE

Pollution and the circular economy

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There is recognition globally that pollution, including from plastics, waste and contamination, is driving ecosystem change and degrading the planet's natural systems.

In response, governments are introducing stronger regulatory measures to respond to pollution that will have significant impacts on businesses and challenge the status quo. These measures have primarily focused on promoting a circular economy, particularly improving product stewardship by establishing minimum recycled content requirements and assigning producers with extended responsibility for the end-of-life of products. A circular economy is a holistic economy strategy to reduce pollution by ensuring that products are designed to be reused, repaired and recycled, thereby minimising waste and maximising resource efficiency.

In December 2024, the Australian Government released Australia's Circular Economy Framework (**Circular Economy Framework**), committing to a national circular economy transition and ambitious goals for reducing waste.

While negotiations on a global plastics treaty at INC-5 were unsuccessful (see page 35 for more information), talks are due to resume in the first half of 2025. Moreover, with countries like Australia releasing ambitious domestic targets and circular economy transition plans, we expect pollution and the circular economy to be an area of significant focus globally in 2025.

Pollution and biodiversity: Setting the scene

Significantly, as part of the landmark agreement reached under the Kunming-Montreal Global Biodiversity Framework (**Global Biodiversity Framework**), almost 200 countries committed to reducing pollution risks and the negative impact of pollution from all sources by 2030, to levels that are not harmful to biodiversity and ecosystem functions and services, considering cumulative effects:[102]

- by reducing excess nutrients lost to the environment by at least half, including through more efficient nutrient cycling and use;
- by reducing the overall risk from pesticides and highly hazardous chemicals by at least half, including through integrated pest management, based on science, taking into account food security and livelihoods; and
- by preventing, reducing, and working towards eliminating plastic pollution.

Following the agreement of the Global Biodiversity Framework, Australia has released its new Strategy for Nature 2024-2030 (**Strategy for Nature**) and committed to increasing Australia's circularity rate, and reducing pollution and its impacts on biodiversity by 2030.[103]

Australia's circularity target is one of six national targets selected by the Federal Government in consultation with State and Territory governments. Other targets include protecting and conserving 30% of Australia's land and 30% of Australia's oceans by 2030 and working towards no new extinctions. The Strategy for Nature is an important policy document that acts as Australia's national biodiversity strategy and action plan submitted under the Convention on Biological Diversity – which serves a similar purpose to NDCs under the Paris Agreement.

200

countries have committed to reducing pollution risks and the negative impact of pollution from all sources by 2030

30%

target to protect and conserve Australia's land and oceans by 2030

'A circular economy is a holistic economy strategy to reduce pollution by ensuring that products are designed to be reused, repaired and recycled, thereby minimising waste and maximising resource efficiency.'

NATIONAL WASTE POLICY ACTION PLAN TARGETS

7

targets have been developed to reduce Australia's waste and improve recovery of resources

10%

reduction in total waste generated in Australia by 10% per person by 2030

Australia's Circular Economy Framework

On 10 December 2024, the Commonwealth Department of Climate Change, Energy, the Environment and Water released Australia's National Circular Economy Framework.[104] The Circular Economy Framework sets out the importance of a circular economy for Australia, recording that Australians throw away 76 million tonnes of waste each year and that globally, the World Bank projects that waste generation will increase by 70% by 2050 unless immediate action is taken.

The Circular Economy Framework commits Australia to doubling the nation's circularity by 2030, as well as reducing the nation's per capita material footprint by 20%, increasing material productivity by 30% and recovering 80% of the nation's resources. Modelling by the Commonwealth Scientific and Industrial Research Organisation indicates that meeting these circular economy goals could increase GDP by $26 billion each year by 2035, reduce GHG emissions by 14% by 2035 and divert 26 million tonnes of waste materials from landfill each year.

The Circular Economy Framework identifies priority sectors where action is needed most and where Australia has unique advantages. These are industry, the built environment, agriculture and food, and resources. For industry, for example, the Framework identifies priority actions as increasing circular packaging and durable, re-usable and sustainable goods. The Framework further offers businesses guidance and case studies as examples on how to cut emissions and waste.

This signals Australia's commitment to a national circular economy transition and will be valuable in guiding businesses on how to embed circular economy into the design of new products and projects, take advantage of green chemistry and advanced technology, and use ESG frameworks and standards to safely recover natural resources. The Circular Economy Framework also supports Australia's broader climate and biodiversity strategies and commitments.

Australia's National Waste Policy Action Plan

In support of the new Circular Economy Framework, the Australian Government also released its new 2024 National Waste Policy Action Plan (**Action Plan**), setting out Australia's priorities for transitioning to a safe circular economy.[105] The Action Plan sets seven targets to reduce Australia's waste and improve recovery of resources, including:

- implementing a ban on the export of waste plastic, paper, glass and tyres, from the second half of 2020;
- reducing total waste generated in Australia by 10% per person by 2030;
- continuing to phase out the use of problematic and unnecessary plastic; and
- halving the amount of organic waste sent to landfill for disposal by 2030

The Australian Government and State and Territory governments are developing implementation plans to support the Action Plan. These plans are expected to be made public by mid-2025. Each government's implementation plan will also have a progress report. The first reports are expected in late 2025.

Review of Commonwealth circular economy legislation

The Federal Government is currently undertaking a review of the *Recycling and Waste Reduction Act 2020* (Cth) (**RAWR Act**) – the primary Commonwealth legislation that supports action on the circular economy, resource recovery and waste management.[106] The terms of reference for the review include recommendations to improve the efficiency and impact of the Act in addressing current and future circular economy needs, resource recovery and waste challenges.[107]

Pursuant to the RAWR Act, the responsible Minister identifies priorities for product stewardship action on an annual basis. Industry is expected to take action for the products on the list and if action is considered to not have been taken, the Minister considers whether new regulatory measures should be introduced in respect of those products. In 2023–24 the Minister listed five products: clothing textiles, tyres, plastics in healthcare products in hospitals, mattresses, and child car seats.[108]

Sustainable procurement

In July 2024, the Federal Government also introduced the Environmentally Sustainable Procurement Policy (**ESP Policy**) that aims to reduce the environmental impact of Federal Government procurement projects by guiding decision making and setting out a reporting framework.[109] Under the ESP Policy, covered entities and their suppliers within the following four procurement categories must demonstrate climate, environment and circularity outcomes: construction services; furniture; fittings and equipment; ICT goods; and textiles.

Notably, the ESP Policy defines and promotes the following circularity principles:

— buildings and fit-outs use less materials, minimise waste, can be deconstructed and reused, are designed for adaptability and flexibility;

— goods are durable, repairable, reusable and/or recyclable;

— goods have been refurbished or existing goods are reused;

— goods contain recycled content/recycled materials are used;

— goods are recycled at the end of useful life;

— goods are returned for resource recovery through a take-back or end of life scheme; and

— goods are available for lease, rent or product-as-a-service as an alternative to buying outright.

When the ESP Policy came into effect on 1 July 2024, it applied only to construction services procurements of $7.5 million or above. However, from 1 July 2025, the ESP Policy will be extended apply to procurements of $1 million or more across each of the furniture, fittings and equipment, ICT goods and textiles industries.

Update on global developments

Globally there are also a range of new and revised measures to facilitate improved product stewardship across key economic sectors. EU Directive 2019/904 requires minimum levels of recycled plastic within polyethylene terephthalate (PET) bottles in the EU of least 25%.[110] The Council of the EU also adopted the Packaging and Packaging Waste Regulation in December 2024 which introduced new requirements for recycling, including requiring that all packaging placed on the EU market must be recyclable from 1 January 2030.[111] Extended producer responsibility laws have also been introduced in various US States, including California and Minnesota.

Looking forward, resumed negotiations at the second session of INC-5 later this year will demonstrate whether parties can reach agreement on a global plastics treaty and international commitment to a circular economy.

/ FEATURE

COP29 and other International Negotiations

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COP29

THE 29TH CONFERENCE OF THE PARTIES TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (COP29) TOOK PLACE BETWEEN 11 TO 24 NOVEMBER 2024 IN BAKU, AZERBAIJAN.

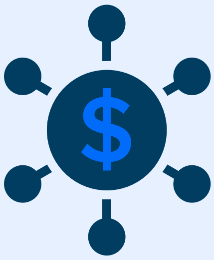
The 'Finance COP' will be remembered for securing agreements on several key agenda items: a new collective quantified goal on climate finance (**NCQG**), the operationalisation of international carbon markets under Article 6 and capitalisation of the Fund for Responding to Loss and Damage. These are significant outcomes that will enable greater climate action and support communities adversely affected by climate change.

The NCQG was the most anticipated agenda item at COP29. Parties agreed on a new target of mobilising at least USD 300 billion annually by 2035, with developed country Parties to take the lead but with voluntary contributions from other parties encouraged. The Parties also agreed on working towards mobilising USD 1.3 trillion per year from all public and private sources by 2035. This landmark decision will help drive the scaling up of climate finance flows, particularly into developing countries; and offer co-investment and blended finance opportunities for the private sector.

Private capital partnering with public capital can help to de-risk investments in developing countries where significant energy transformation is required to meet NDCs and global emissions reduction targets.

The operationalisation of international carbon markets under Article 6 of the Paris Agreement was another significant achievement at COP29. Critical agreements were reached on important technical elements as well as the standards for implementing projects and activities eligible to generate carbon credits. This means that there will be new opportunities for the private sector to engage in carbon markets and support international emission reduction efforts (see our carbon market developments updates from page 18).

However, Parties were unable to agree to take work forward from COP28 on implementing the outcomes of the first Global Stocktake, nor was there any real progress in respect to commitments to phase out unabated fossil fuels, increase the uptake of renewable energy or improve energy efficiency – some of the key decision points from COP28.



USD **300bn**

Parties agreed on a new target of mobilising at least USD 300 billion annually by 2035, with developed country Parties to take the lead but with voluntary contributions from other parties encouraged.

For Australia, the outcomes of COP29 are important and reflective of shifting global and domestic climate policies and investor expectations in respect of climate change. It is clear there are significant climate-related risks and opportunities for Australian governments and businesses presented by the energy transition. However, the lack of progress on phasing out fossil fuels and scaling up renewable energy demonstrates the unique challenges in the energy transition. It is important for businesses to familiarise themselves with the outcomes of COP29 and areas of future focus because these will inform expectations of the private sector and provide opportunities to contribute to and benefit from the increasing flows in climate finance and policy settings for a decarbonising economy.

For further details on key outcomes of the conference and what they mean for Australian businesses see our article: *The 'Finance COP': COP29 outcomes and key takeaways for businesses on global climate action*.

COP16 and developments in Biodiversity Credit markets

The 16th Conference of the Parties to the United Nations Convention on Biological Diversity (**COP16**) concluded on 2 November 2024, closing two weeks of negotiations in Cali, Colombia between representatives of 196 countries. Unfortunately, Parties could not reach agreement on a clear strategy for mobilising financial resources to achieve the Kunming-Montreal Global Biodiversity Framework (**KMGBF**)'s global goals and targets or on a monitoring framework to track progress against the KMGBF. These unresolved issues will be revisited next year, hopefully with renewed urgency noting the sobering findings of the Protected Planet Report 2024 launched at COP16 that drastic conservation action is urgently needed to meet the conservation goals of the KMGBF. In the words of the Protected Planet Report, 'this decade marks the make-or-break moment for the health of the planet'.[112]

Despite these challenges, two landmark agreements were reached between Parties: the establishment of a new Subsidiary Body to enhance Indigenous peoples' and local communities' participation in the COP, and the creation of the 'Cali Fund', a multilateral benefit-sharing mechanism requiring users of genetic data from nature (digital sequence information) to contribute a portion of their revenue. During COP16, the International Advisory Panel on Biodiversity Credit (**IAPB**) also released its highly anticipated framework based on the 21 high-integrity principles developed by the IAPB in partnership with the Biodiversity Credit Alliance and World Economic Forum.[113] For further details on the key outcomes of the conference see out article *Biodiversity COP16 – Key outcomes and what they mean for business*.

Shortly after the conclusion of COP16, the International Emissions Trading Association (**IETA**) released a report on scaling up biodiversity credit markets, identifying integrity and the role of governments in driving demand.[114] In its report, IETA sets out the importance of learning from the carbon markets in the development of the biodiversity markets and ensuring the high integrity of biodiversity credits.

These agreements and initiatives of international organisations signal the ongoing importance of implementation of the KMGBF and the critical role of biodiversity markets. These will continue to present new challenges and opportunities for businesses seeking to manage the biodiversity impact of their activities and take advantage of emerging biodiversity markets.

Global Plastics Treaty Negotiations

The fifth session of the Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment (**INC-5**), also took place late last year, from 25 November to 1 December 2024 in Busan, Republic of Korea.[115] The negotiations at INC-5 were intended to progress the development of a global plastics treaty addressing the full life cycle of plastics and ensuring plastic production and disposal methods align with environmental goals.

However, the Parties at INC-5 were unable to reach agreement on the enactment of a global plastics treaty, with nations presenting different views on what the treaty should look like. Parties had agreed to resume negotiations in February 2025. However, a Draft Summary and Action Points from an INC Bureau Meeting held on 21 January 2025 reported that preparations for a resumed fifth session of the INC were still ongoing, and 'the possibility of holding it in Geneva in mid-July is being explored'.[116]

A plastics treaty, if ratified by Australia and implemented in domestic law, would have broad implications on how plastic is produced, used and disposed of within Australia and other States that are a Party to the treaty. While progress on negotiations has been slow so far, and agreement was not reached at the most recent negotiations, Parties have nonetheless signalled their commitment to work towards a treaty.

Businesses should generally monitor ongoing negotiations with respect to a plastics treaty and any announcements the Australian Government may make with respect to the negotiations. See our article on *Pollution and the Circular Economy* from page 30 for further developments in the circular economy.

/ CLIMATE

Seven deadly sins of scenario analysis

/ WORDS BY

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Like medieval merchants clinging to flat-earth maps, businesses today risk eternal purgatory in a changing world by committing cardinal sins of scenario analysis.

This article highlights seven common mistakes that undermine climate scenario analysis, leading to poor strategic decisions.

1 The 'climate as a standalone risk' fallacy

Many businesses still treat climate risk as distinct from operational and regulatory risks, misrepresenting the challenge. Keeping things separate makes analysis easier on the surface, but doesn't reflect the reality that business value is inextricably linked to climate. Climate change does not sit on the risk register – it reshapes it.

Treating climate as a separate risk also frustrates management action. If climate risk is treated separately, it invites the development of separate management actions and responsibilities. For example:

— Climate-related business disruption from climate might be addressed by the sustainability team, but other facility disruptions might be addressed by the operations team.

— Regulatory changes on carbon pricing might be addressed by the sustainability team, but other regulations are addressed by the government relations team.

This is not an efficient way forward. When climate is seen as a driver of existing risk, the solution becomes clearer: it's about the sustainability team supporting existing risk controls and equipping existing responsibilities with better information about the changes unfolding.

2 The average score mirage

No-one would say that the effects of a storm and a wildfire cancel each other out, but this is what we say when we try to create an average climate risk score. Consider the risk ratings for climate events across two sites:

CLIMATE EVENT	SITE A	SITE B
Storm	3 - Moderate	5 - Severe
Heatwave	3 - Moderate	5 - Severe
Wildfire	3 - Moderate	1 - Very Low
Sea level rise	3 - Moderate	1 - Very Low
Drought	3 - Moderate	1 - Very Low
Climate risk (taken as an average)	3	2.6

Busy decision makers looking for the answer will prioritise investment in Site A over Site B based on the average climate risk score.

Is this the right call? Probably not.

At Site B, storm and heatwave risks could cause disproportionate financial damage due to their severity. People have written entire books about the importance of high-impact, low-probability events – *The Black Swan* by Nassim Taleb being an example.

As Einstein said: "Make things as simple as possible, but no simpler." Aggregate climate risk scores offer problematic simplicity. Acknowledging the diversity of climate effects leads to targeted insights for decision making – which is the actual objective of scenario analysis.

If climate risk is treated separately, it invites the development of separate management actions and responsibilities.

3 Scenario analysis is not sensitivity analysis

Companies perform sensitivity analysis all the time, so it's easy to assume that climate scenario analysis is just a sensitivity analysis on climate. Despite similar names, sensitivity analysis and scenario analysis are apples and oranges.

In sensitivity analysis, a business tests the capacity of its existing strategy to withstand a challenge (such as a carbon price). Many companies have published climate scenario analyses that are, upon closer inspection, actually sensitivity analyses.

It is a nuanced but important distinction for business resilience. Sensitivity analysis imputes the objectives of control and short-term efficiency – fundamentally at odds with scenario analysis' goal of long-term resilience.

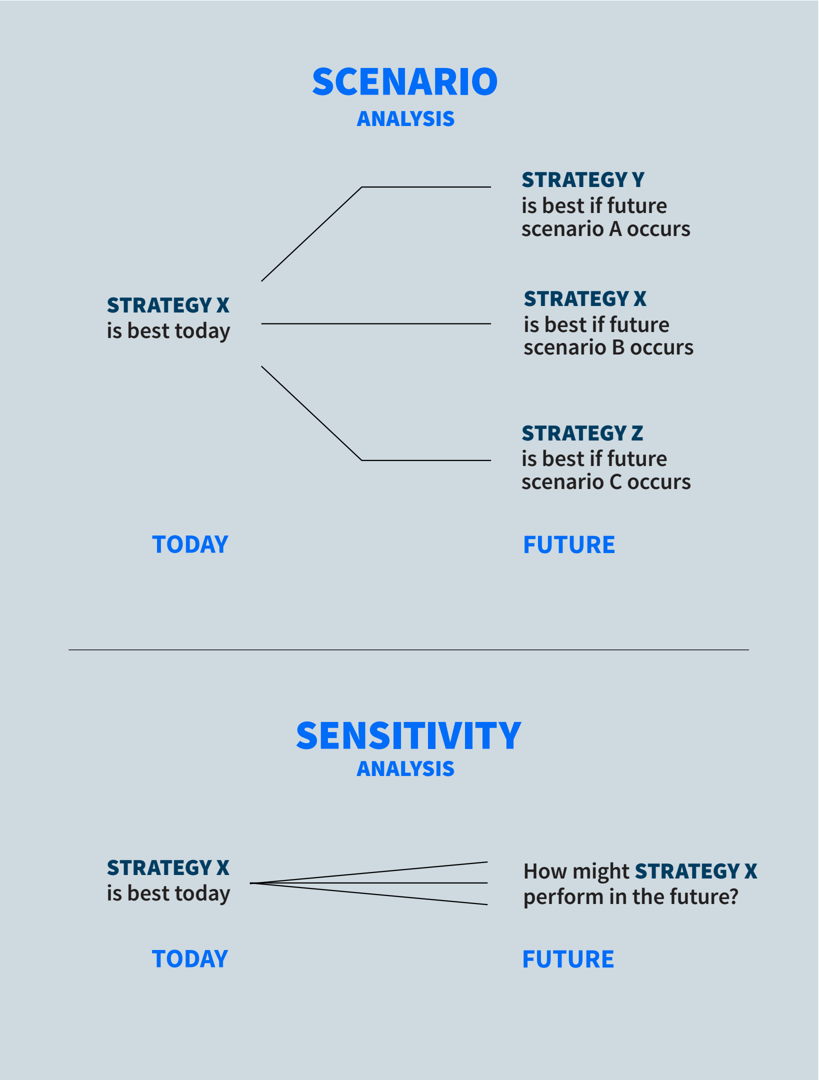
4 The baseline 'no change' fantasy

When considering future change, it is tempting to assume a 'no change' *counterfactual baseline* for comparison purposes.

The Bank of International Settlements concludes that 'no change' scenarios are misleading for climate scenario analysis. They note that other baseline scenarios such as a warming of 3°C or a transition to a low-carbon society by 2050 'is more informed and realistic than the use of the counterfactual baseline, which assumes that neither climate change nor policy-driven transition will happen'.

This bears repeating. The Bank of International Settlements considers that a low-carbon society by 2050 is 'more informed and realistic' than a scenario assuming no change.

'No change' scenarios offer no value in scenario analysis – not even as a 'baseline'. They imagine fantasy conditions that justify 'staying the course' while change continues apace.



Companies perform sensitivity analysis all the time, so it's easy to assume that climate scenario analysis is just a sensitivity analysis on climate. Despite similar names, sensitivity analysis and scenario analysis are apples and oranges.

5 The 'most likely' delusion

Scenario analyses have been criticised because they don't identify a *most likely* scenario. If no scenario is *most likely*, how are we supposed to plan for the future?

While *most likely* scenarios help plan for optimisation, they do not support a company's resilience. TCFD guidance does not suggest the use of a most likely scenario. The Network on Greening the Financial System doesn't pick a most likely scenario.

The most likely scenario is sinful because it narrows decision makers' focus on a single predicted future, at the expense of others. Resilience is about preparing for uncertainty, including unlikely futures with high impact. A narrower focus encourages the type of thinking that scenario analysis seeks to avoid altogether.

6 The Goldilocks 'central case'

Today's GHG emissions and warming exceed the upper limit of projections from decades ago.

This doesn't mean projections are useless for scenario analysis. Instead, it informs how we need to use them to inform decision making. Climate scenario analyses should include a high emissions scenario that assumes extreme (but plausible) warming, and a low emissions scenario that assumes a rapid (but plausible) low-carbon transition.

If we include a third, we need to be mindful of the sin of the central case. Once we've developed our high emissions and low emissions scenarios, a third scenario will land somewhere between the two extremes. Scenarios lying between the extremes invite the assumption that they are a *central case* scenario – one that seems like an average of the low and high emissions scenarios.

Like the tale of Goldilocks, participants will gravitate to this *central case* as "just right" – a sensible scenario to plan for because it includes a bit of everything.

The opposite is true. Planning for a central case scenario risks addressing neither the low-emissions nor high emissions scenario.

When building scenarios that lie between the extremes, be sure to include something unique like a shock event. This helps additional scenarios offer something unique to the assessment and minimise the tendency for participants to discount the extremes.

7 The financialisation fetish

Financial forecasting in scenario analysis is the ultimate case of substituting means for ends. The TCFD itself says that it isn't looking for a financial forecast. Considering financial effects is a means to an end – a resilient company strategy.

Take an example that will remain anonymous but is publicly disclosed. The company noted climate-related reputation risks and estimated the financial impact 'though there is no globally recognized approach to estimate such financial impact.

The financial impact of 1% revenue was a consensus reached by experts after discussions and assessments'.

Investors care more about how companies manage reputation risk than about speculative financial estimates. This is what resilience is about. Offering a speculative financial forecast fails to demonstrate how the company is resilient to climate change.

Today's sustainability reporting standards push back against the financialisation fetish. The creators of the European Sustainability Reporting Standards clarify that when reporting on financial effects from climate change: 'The intent is not to report the monetary amount of expected damage and loss ... which would be complex and uncertain to estimate'.

Resist the temptation to deliver a precise financial forecast of future climate effects. It's expensive, prone to accusations of fake certainty, and isn't required. Instead, focus on the true purpose of scenario analysis – a comprehensive set of actions that enhance the resilience of your corporate strategy.

/ NATURE

Cities, tech, climate and nature

Emerging solutions from the Smart Cities Expo World Congress 2024

/ WORDS BY

Josue Castro
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On 5-7 November 2024 I had the privilege of attending the Smart Cities Expo World Congress (SCEWC 2024) in Barcelona, Spain.

Billed as the world's premiere urban innovation event, SCEWC 2024 had more than 25,000 attendees, 1,150 exhibitors and 632 speakers over 261 sessions – all packed into three days.

In view of such an enormous scale, what follows is a mere summary of what I saw as I sought to answer the question: *how is technology helping cities achieve climate resilience and nature positivity?*

A clear climate mission

Urban sustainability is a consistent theme for SCEWC. But, wedged in between the Valencia floods (the deadliest in modern Spanish history) and the re-election of Donald J. Trump as the 47th US President, the climate challenge took on a particular, palpable urgency in 2024.

At the opening of the Congress, Barcelona's First Deputy Mayor Laia Bonet Rull declared that *'a smart city isn't smart because it gathers the most data … it is smart if it uses that data to address climate change*.

This message resonated throughout the event with remarkable consistency as, one after another, speakers showcased how their city strategies and business offerings sought to address climate change. Across the many examples I heard, I discerned three broad categories of technology use, which I list below with illustrative examples.

'Baselining' performance to identify solutions: the CTO of a US town outside a major city described his use of pollution sensors to identify passing traffic as the source of disproportionately high carbon emissions. Moreover, the real culprit was the town's inefficient traffic light system, which caused passing vehicles to idle *in* the town, polluting its air. Simple changes to the town's signal timing resulted in significant improvements to local air quality.

Scaling solutions to the city-level: a smart city leader in Prague described using IoT sensors to implement *dynamic* waste collection: essentially, 'smart' bins would hail the nearest municipal garbage truck when they needed to be emptied, turning garbage collection into something akin to a taxi service, and resulting in more efficient truck routes and lower carbon emissions. A similar use of 'traffic analytics' across a number of global cities is also helping to optimise the management of road transport, lowering emissions more generally.

Delivering sustainable smart systems: Dubai's innovative urban cooling initiative, for example, involves the networking of sensors and leveraging of a digital twin platform to provide energy-efficient cooling for an entire urban precinct. Also in the Middle East, the new urban developments of Al-Medinah and ROSHN in Saudi Arabia are using expansive digital twins to inform a more efficient approach to urban planning and construction, and to provide residents with a connected, interactive platform for community engagement and precinct management.

This message was a welcome reminder that, notwithstanding the politics in Washington D.C. or in a number of European countries, a growing number of tech businesses consider addressing climate change a core part of their mission, and a competitive value proposition.

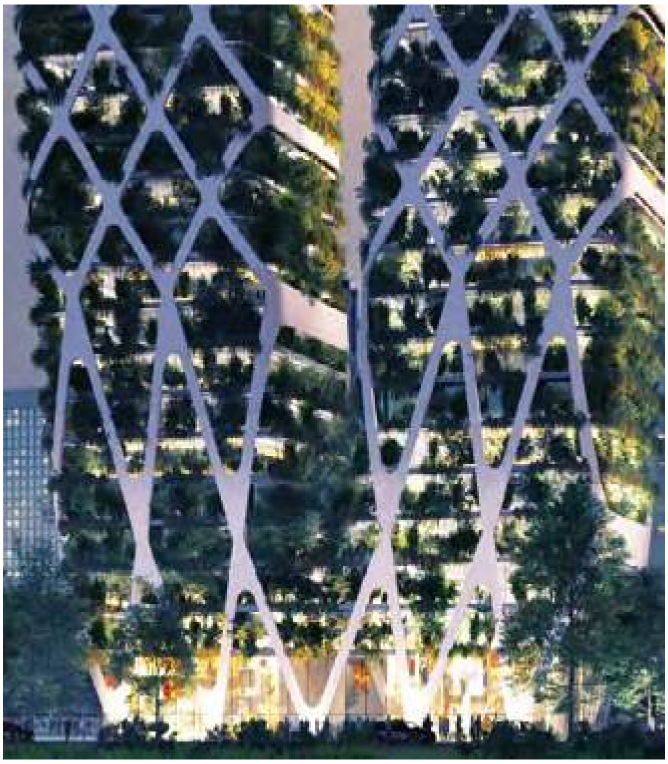
Further, while it is true that the global climate-tech sector has taken a hit, as a 2024 PwC report argues, the market is also rebalancing away from much-hyped investment opportunities and towards promising new segments with more solid fundamentals, such as more rigorous adaptation and resilience (A&R) technologies and AI-powered analytical solutions.

Saudi Arabia is using expansive digital twins to inform a more efficient approach to urban planning and construction, and to provide residents with a connected, interactive platform for community engagement and precinct management.

A blossoming nature opportunity

It was heartening to also hear several speakers note the vital role nature can play in addressing climate risks and reducing global carbon emissions. Felix Finkbeiner, founder of the Plant for the Planet initiative in Spain, was one of several who explicitly championed the cause of greening our urban environments as part of a global nature regeneration agenda.

Another exciting company present in SCEWC 2024 was BIOO, a biotech leveraging its expertise in plant biology, electrochemistry and electronic engineering to design soil-powered batteries; tactical plant 'light-switches' that respond to human touch; and gardens with natural and augmented bioluminescence, designed to provide ambient, environmentally-sensitive lighting at night. These innovations show how technology and nature can provide beautiful, exciting and interactive community experiences in urban natural environments – essentially, a new nature-sensitive approach to urban placemaking.



But I was surprised to find few other examples of this exciting technology-nature nexus. These intelligent, or augmented, nature-based solutions (NbS) merit a greater focus at future SCEWC conferences. They represent a new, but quickly-evolving solution space for nature. A 2023 academic review of the previous decade's experiments with what might be called 'augmented Nature-based Solutions' ('augmented NbS') proposed a simple dichotomy, which I summarise below.

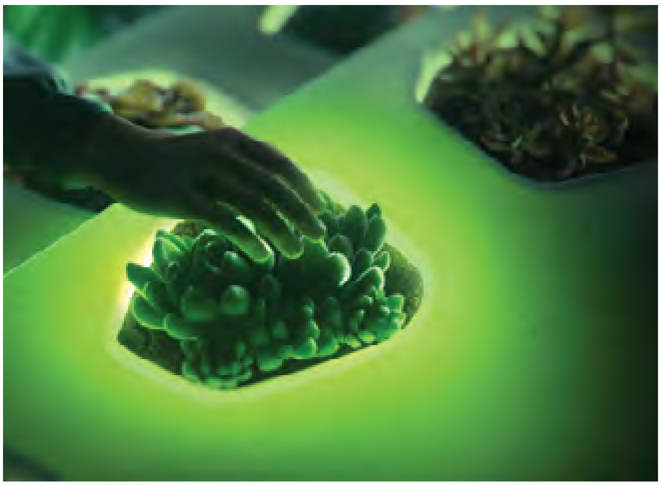
- **Technology used '*in*' NbS**, where digital technologies are embedded into a NbS project in a way that *augments* its ordinary benefits. A brilliant example of this is the multi award-winning SIMP@CT project, which integrated internet of things (IoT) sensors and AI with a tailored irrigation system across Bicentennial Park in western Sydney. The project directed irrigation to heat spikes in the park, leveraging the natural process of tree transpiration to lower local temperatures by up to 10 degrees celsius – essentially turning the park into a living air conditioning system.
- **Technology used '*on*' NbS**, where digital technologies are used to optimise project management, performance management and evaluation. For example, IoT and mobile phone integration was used to support the running of an urban green canopy regeneration project in Brazil's Sao Jose dos Campos. The same QR codes that supported responsive project management also enabled a deeper citizen engagement program, allowing citizens to learn about the species of trees growing around them, the benefits they provide, and how they could help care for their growth.

A green path to climate adaptation and resilience

Globally, investment in nature regeneration is far behind the mark: according to the UNEP's State of Nature Finance Report 2023, to meet the biodiversity restoration targets set by the 2022 Global Biodiversity Framework, it will need to triple to USD 542 billion per annum by 2030. The private sector in particular must accelerate its investments: as of 2022, it accounted for a paltry 18% of investment in NbS.

This is where nature-tech solutions like augmented NbS hold significant potential. Investors should consider seriously the many ways in which these platforms can be leveraged for environmental, social and economic benefits. For starters, the hardware and software platforms that enable solutions such as SIMP@CTs are scalable, and relatively low-cost: one can imagine a similar solution being implemented at the level of a large building, a CBD retail and residential precinct, or a large urban, suburban or regional park.

Second, in the face of widespread questions around the availability of trustworthy nature data, these solutions can generate volumes of decision-useful data. Organisations investing in nature-tech can not only align with metrics and targets that evidence a positive impact on nature; they can also contribute to emerging global best practice on the measurement and disclosure of nature-positive outcomes.



Finally, augmented NbS projects can address a real obstacle to investment in NbS. A 2023 PwC study found large investors (particularly institutional investors) were not attracted to NbS projects because of their small ticket sizes, with only 3% of the projects reviewed being valued at over USD 50 million. Consider, however, the opportunity to 'bundle' augmented NbS projects – particularly by leveraging common datasets and scaling the data pools they create. This may allow investors to opt in to attractive NbS portfolios. (A similar approach called 'financial aggregation' has emerged in the world of climate adaptation finance.)

All of which suggests technology and nature as a fertile ground through which to accelerate investment in nature while making positive measurable, scalable and network-able impacts in the state of nature.

A hopeful prospect

The challenges to a nature-positive future cannot be discounted. But, in the face of political headwinds and economic pressures, 'smart city' technology applications such as those showcased at SCEWC 2024 left me with a distinct sense of hope. When it comes to addressing climate change and investing in nature, businesses are ready and cities are leading the way. Courage, imagination, entrepreneurship and a long-term perspective on the value of investing in nature will hold us in good stead for the future.

Organisations investing in nature-tech can not only align with metrics and targets that evidence a positive impact on nature; they can also contribute to emerging global best practice on the measurement and disclosure of nature-positive outcomes.

/ CYBER AND PRIVACY LAWS

Cyber and Privacy Law Regulatory Updates

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Enhanced Cyber Security laws and governance principles

A new Cyber Security Act

On 25 November 2024, Australia's first standalone *Cyber Security Act 2024* (Cth) was passed by Parliament (**Cyber Security Act**).[117] The Cyber Security Act is part of the broader Cyber Security Legislative Package 2024, designed to implement seven initiatives under the 2023–2030 Australian Cyber Security Strategy, addressing legislative gaps to enhance Australia's cyber security practices in line with international best practice.

In November 2024, the Australian Signals Directorate released its Annual Cyber Threat Report, revealing that over 87,400 cybercrime incidents were reported during the 2023 to 2024 period, equating to one report every six minutes.[118] This serves as a stark reminder of the need for robust cyber governance practices.

To address the quickly evolving cyber security landscape, the Cyber Security Act introduces:

- the power to mandate security standards for smart devices;
- mandatory reporting obligations for entities affected by a cyber incident and where ransomware payments are made to an extorting entity;
- a 'limited use' obligation restricting how cyber security information provided to the National Cyber Security Coordinator (and other government departments and agencies) can be used and disclosed; and
- a Cyber Incident Review Board to conduct post-incident reviews into significant cyber security incidents.

As part of the Cyber Security Legislative Package, the Cyber Security Act was enacted alongside amendments to the *Security of Critical Infrastructure Act 2018* (Cth), *Intelligence Services Act 2001* (Cth) and *Freedom of Information Act 1982* (Cth). For a detailed overview of the reforms passed under the Cyber Security Legislative Package, see our article *Cyber Security Legislative Package passes Parliament*.

Revised Cyber Security Governance Principles

Coinciding with the passage of the Cyber Security Act, the Australian Institute of Company Directors (**AICD**) released its revised Cyber Security Governance Principles (**Cyber Security Principles**), designed to address emerging issues in the cybersecurity space.[119]

With businesses increasingly relying on internet-facing systems and digital platforms, cyber threats are a critical risk for organisations of all sizes and have become a central component of organisational risk management. The ever-evolving nature of these threats necessitates that boards remain vigilant to both current and emerging risks while strengthening their understanding of their organisations' cyber resilience.

The AICD has recorded that Directors continue to rank cyber security and data theft among their top concerns.[120] The AICD's updated Cyber Security Principles are a valuable resource, offering a practical framework to assist Directors and governance professionals in proactively managing cyber risks.

The key enhancements to the AICD's Cyber Security Principles include:

- addressing risks related to the digital supply chain, data governance, and regulatory changes;
- ensuring regular upskilling for Directors and management teams;
- incorporating cyber risks into existing risk management frameworks;
- establishing clear incident response plans with defined roles and responsibilities;
- avoiding technical jargon in documentation and communication; and
- protecting critical digital assets while routinely assessing risk controls.

To assist in managing cyber risk, businesses should familiarise themselves with the Cyber Security Principles and use the AICD's practical framework provided in the revised principles to support better cyber practices, enhanced resilience and proactive board oversight of cyber security.

With businesses increasingly relying on internet-facing systems and digital platforms, cyber threats are a critical risk for organisations of all sizes and have become a central component of organisational risk management.

While the proactive implications for Australian businesses are minimal at present, there are various changes from an enforcement perspective that Australian businesses will need to be aware of.

Landmark privacy law reforms enacted

Privacy Act Amendments

On 29 November 2024, Parliament passed the Privacy and Other Legislation Amendment Bill 2024,[121] marking the first phase of significant privacy reforms in Australia, as agreed in the Government Response to the Privacy Act Review Report. See our article on the Privacy Act Review in Sustainability Insights Issue 4 for further details on the Federal Government's response to the Privacy Act Review Report. *The Privacy and Other Legislation Amendment Act 2024* (Cth) (**Privacy Amendment Act**) amends the *Privacy Act 1988* (Cth) and seven other Acts to introduce new measures to strengthen the protection of individuals' privacy with respect to their personal information.

The Privacy Amendment Act introduces, amongst other things:

- a multi-tiered civil penalties system, with the addition of two new categories of penalties – (1) a mid-tier penalty for general privacy interference, and (2) infringement notices for a variety of prescribed contraventions;
- a statutory tort for serious invasions of privacy;
- bolstered monitoring and investigation powers for the Office of the Australian Information Commissioner (**OAIC**);
- new obligations on businesses to address automated decision-making within their privacy policies; and
- a requirement for OAIC to develop a Children's Online Privacy Code by 11 December 2026, outlining the obligations for handling children's information online.

See our articles *One small step – the Privacy Amendment Bill has passed* and *Privacy Amendment Bill: a new risk landscape* for further details on the new amendments.

While the proactive implications for Australian businesses are minimal at present, there are various changes from an enforcement perspective that Australian businesses will need to be aware of. As these amendments are only the first tranche in a range of reforms, these signify the start of a shift in how organisations subject to the *Privacy Act 1988* (Cth) will be required to handle personal information and will likely require operational changes within organisations to be assessed as future reforms become law.

To ensure compliance, businesses should review their privacy policies and practices against the new requirements, in particular with respect to the use of any automated decision-making technologies utilised by organisations and the sufficiency of the organisations' technical and organisational security measures.

A new Social Media Minimum Age

In tandem with the privacy reforms discussed above, on 29 November 2024 the Government passed the *Online Safety Amendment (Social Media Minimum Age) Bill 2024* (Cth) (**Social Media Act**),[122] amending the *Online Safety Act 2021* (Cth) to establish a minimum age of 16 for social media use by requiring social media platforms to take reasonable steps to prevent users under the minimum age from holding accounts. The Social Media Act is designed to address rising concerns about young people's safety on social media platforms.

The reforms do not dictate how social media platforms must comply with the minimum age obligation. However, the Explanatory Memorandum to the Social Media Act sets out that it is expected that at a minimum, the obligation will require platforms to implement some form of age assurance, as a means of identifying whether a prospective or existing account holder is an Australian child under the age of 16 years.[123] It is envisaged that the eSafety Commissioner will draft guidelines for providers to understand the regulator's expectations in terms of what 'reasonable steps' will entail.

The framework also provides for the making of legislative rules to exclude specific services, such as messaging apps and services that primarily support health and education, ensuring young people have continued but safe access to beneficial online activities, including connection with friends, access to community and support services, and participating in public life.

See our article *Adults only – the Social Media Minimum Age Bill bans social media for under-16s* for further details about the Social Media Act.

The Explanatory Memorandum to the Social Media Act provides that the Government will undertake public consultation on the draft rules, to ensure they adequately reflect the intention of the Social Media Act of minimising harms on social media platforms.

It is intended that the rules will be consulted on, settled and made by the Minister for Communications before the commencement of the minimum age obligation which will occur at least 12 months after Royal Assent, which was received on 10 December 2024. While the Social Media Act does not contain any obligation on the Government to conduct public consultation, it is likely that if such public consultation goes ahead, this will occur in the coming months.

The Social Media Act is designed to address rising concerns about young people's safety on social media platforms.

16yrs

The minimum age now required by law for social media usage

/ HUMAN RIGHTS AND SOCIAL

Anti-Money Laundering Update

/ WORDS BY

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Strengthened Anti-Money Laundering and Counter-Terrorism Financing Regime

On 28 November 2024, the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (Amended AML/CTF Act) was passed,[124] with amendments.[125]

The reforms are designed to enhance the deterrence, detection and disruption of money laundering, terrorism financing and proliferation financing. The Amended AML/CTF Act will establish a more outcomes-based system of compliance, by outlining the outcomes to be achieved while affording flexibility to meet these outcomes. The reforms to the current rules will facilitate the outcomes-based system by removing unnecessarily prescriptive steps.

The Amended AML/CTF Act received royal assent on 10 December 2024. These amendments substantially come into effect for existing reporting entities on 31 March 2026, and for 'Tranche II' reporting entities on 1 July 2026. For existing reporting entities, the highly anticipated changes to the 'tipping off' prohibition come into effect from 31 March 2025.

The Amended AML/CTF Act will establish a more outcomes-based system of compliance, by outlining the outcomes to be achieved while affording flexibility to meet these outcomes.

The key objectives and reforms of the amendments to Australia's AML/CTF regime, including through the Amended AML/CTF Act, include:

- expanding the AML/CTF regime to additional high-risk services provided by Tranche II entities (namely, real estate professionals, lawyers, accountants, trust and company service providers, and dealers of precious stones and metals);
- extending regulation under the AML/CTF regime for virtual asset and value transfer (payments) services (including payment intermediaries). For example, the amendments introduce new designated services covered by the regime (including for virtual asset and value transfer services) and changes to reporting obligations, including for international value transfer reporting (formerly IFTI reporting) and travel rule requirements;
- simplifying the AML/CTF regime to increase flexibility, reduce regulatory impacts and support businesses to better prevent and detect financial crime. For example, the amendments intend to provide a clearer picture of a designated service provider's AML/CTF obligations, including in relation to undertaking (and triggers for updating) risk assessments that must flow through its AML/CTF policies and procedures, the AML/CTF program documentation and governance (including oversight and approval) requirements, and simplifying the approach to customer due diligence; and
- broadening the gathering and enforcement powers of the Australian Transaction Reports and Analysis Centre (AUSTRAC). This includes introducing examination powers (similar to compulsory ASIC examinations) and expanding AUSTRAC's power to obtain information under a s167 notice to a broader class of persons.

These reforms are supported by a new AML/CTF Rules Framework. The new framework creates two separate rule instruments containing 'Exemption Rules' and 'General Rules':

The new 'General Rules' will be established by a new instrument aligned with the Amended AML/CTF Act named the Anti-Money Laundering and Counter Terrorism Financing Rules 2025.

The 'Exemption Rules', will be drawn from existing exemptions to the current AML/CTF Act that are appropriate to retain, and will be contained in the existing *Anti-Money Laundering and Counter-Terrorism Rules Instrument 2007 (No. 1)* (Cth), which will be renamed the *AML/CTF (Exemptions) Rules 2007* (Cth).

On 11 December 2024, AUSTRAC released a first exposure draft for consultation,[126] addressing topics including, amongst others, AML/CTF Programs, Customer Due Diligence, AML/CTF Compliance Officers, compliance reporting and 'Transfer of Value'. The consultation period concluded on 14 February 2025, and a second exposure draft of the AML/CTF Rules will be released for further consultation addressing the amendments adopted from the first round of consultation and additional topics for consideration.

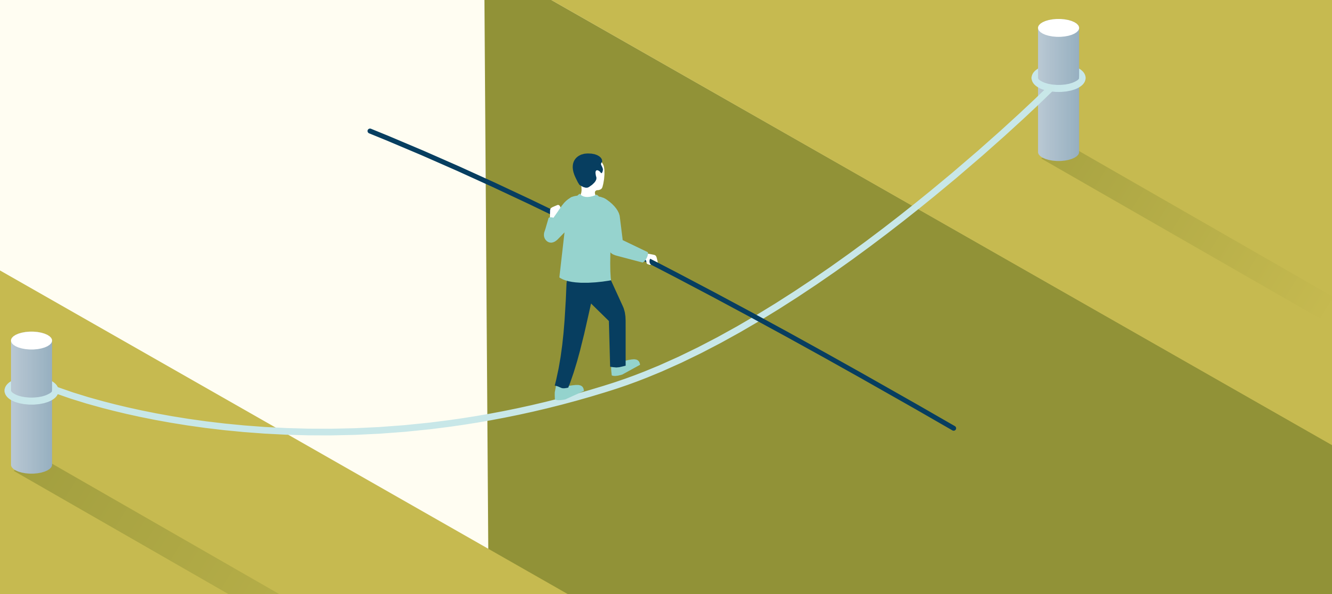
The proposed amendments to the AML/CTF Rules will impact all reporting entities and have flow-on effects to other entities. Businesses should review the consultation paper and consider providing feedback on the proposed approach in the Rules and the questions posed in the consultation paper.

For further details on the Amended AML/CTF Act and Rules, and the implication of these key reforms, see our article *Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Reforms – snapshot of the key changes to the Australian AML/CTF Laws – consultation on the proposed rules, now open.*

/ HUMAN RIGHTS AND SOCIAL

DEVELOPMENTS IN CORPORATE ACCOUNTABILITY AND GOVERNANCE:

Modern Slavery Reporting



/ **WORDS BY**

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Lily Morton
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Corporate accountability and governance have seen significant developments over the past year – the introduction of the European Union Corporate Sustainability Due Diligence Directive, the proposal for a Federal Human Rights Act in Australia and the introduction of mandatory climate reporting across various jurisdictions, including Australia – to name a few. The implications of these developments have been and will continue to be significant for businesses.

Most recently, on 2 December 2024, the Australian Government released its highly anticipated response to the report of the statutory review of the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**).[127] Professor John McMillan AO led the statutory review, which commenced in August 2022. After an extensive consultation process, a detailed report from the review was produced and tabled in Parliament on 25 May 2023 (**Report**).[128] The Report sets out 30 recommendations to amend the Modern Slavery Act which, if implemented, would have significant implications for all reporting entities.

In its response to the Report (**Response**), the Government agreed in full or in principle to 25 of the 30 recommendations from the Review. While the Government's Response has been critiqued in part for lacking ambition and commitment, with the implementation of most recommendations deferred to further consultation, the sentiment of the response is clear – stricter requirements to address modern slavery are coming and businesses should be taking this opportunity to enhance their internal capabilities in preparation.

Below, we unpack the Government's Response and the implications for businesses of potential reform.

REVIEW OF THE MODERN SLAVERY ACT

Setting the scene: the Modern Slavery Act

The Modern Slavery Act, which came into effect from 1 January 2019, requires Australian entities and entities that carry on business in Australia with an annual consolidated revenue of at least $100 million to prepare annual modern slavery statements. At the time, the Act was considered a significant advancement over the UK's Modern Slavery Act, notably due to the requirement for statements to be published on a government-run public register.

The key features of the current Modern Slavery Act include:

- **Reporting entity**: Australian entities and entities that carry on business in Australia with an annual consolidated revenue of at least $100 million must prepare an annual modern slavery statement to be submitted to the Minister within six months of the end of the reporting period;[129]
- **Substantive content**: Modern slavery statements must comply with the mandatory reporting criteria, including disclosure on whether there are modern slavery risks in the entity's operations and supply chains, the actions it has taken to address those risks, and the effectiveness of those actions. The modern slavery statement must be approved by the governing board of the entity and signed by a senior officer;[130]
- **Non-compliance**: failure to comply with a procedural requirement of submitting a modern slavery statement may result in remedial action if no explanation is provided within 28 days, including publication of the reasons why the entity has failed to comply with the remedial request. Non-compliance does not attach any criminal or civil liability;[131] and
- **Publication and transparency**: the Minister maintains a public Modern Slavery Statements Register containing all modern slavery statements of reporting entities. This aims to encourage entities to be serious in identifying, reporting and addressing modern slavery risks.[132]

Since the introduction of the Modern Slavery Act in 2018, the global regulatory environment has evolved considerably, with more stringent modern slavery frameworks introduced in other jurisdictions and significant global attention on the role of business in responding to modern slavery. Fortuitously, the Modern Slavery Act mandated a review of the operation of the Act three years after its enactment.

MODERN SLAVERY REVIEW

136
survey submissions analysing Modern Slavery

526
responses to online questionnaires and surveys

103
meetings and consultations held

The Report of the statutory review

On 25 May 2023, the Report of the statutory review was tabled in Parliament. The Report is a thorough analysis of the operation of the Modern Slavery Act in its first three years, informed by extensive public consultation. The Review received 136 submissions, 526 responses to online questionnaires and surveys, and conducted 38 consultation meetings and 65 meetings with government officers.

The Report recorded that a widely endorsed view is that 'the Modern Slavery Act in its early years has not yet caused any meaningful change for people living in conditions of modern slavery'.[133] It noted that while businesses generally appear to be taking the reporting requirement seriously and investors are paying closer attention to the quality of reporting, there is widespread criticism that the reporting is not being taken seriously enough and statements are resembling a tick-box exercise for a number of entities.[134]

The Report made 30 recommendations for legislative and administrative changes to strengthen the modern slavery reporting requirements. The most significant recommendations being that the reporting threshold be lowered to capture all businesses with an annual consolidated revenue of $50 million, reporting entities be required to implement a due diligence system and have a duty to take effective action to identify and assess risks, and that penalties be introduced for failing to comply with reporting requirements.

The key recommendations, together with the Government's responses, are set out on the next page.

The Government's response

The Government agreed in full or in principle to 25 of the 30 recommendations from the Review. The key recommendations and the Government's response are set out in the table on the next page.[135]

The recommendations for legislative changes to the Modern Slavery Act were complemented by administrative enhancements to enhance guidance for reporting entities to strengthen the modern slavery reporting framework. Most of these administrative recommendations were agreed to.

WHAT THE REVIEW MEANS FOR BUSINESSES

While the Government has not committed to immediate amendments to the Modern Slavery Act, its response and commitment to undertake consultation on most recommendations signals that amendments will almost certainly be progressed in the future.

Any reforms that the Australian Government introduces will directly impact reporting entities under the Modern Slavery Act, and other businesses within their supply chains. For example, these reforms may expand the scope of disclosure or due diligence requirements or impose penalties for non-compliance, which reporting entities will need to be abreast of to ensure ongoing compliance.

Reporting entities, and businesses within the supply chains of reporting entities, should closely follow the Government's consultation on the items it has agreed to in-principle but subject to further consultation, and any other announcements with respect to potential reforms to the Modern Slavery Act. Particularly with the prospect of penalties for non-compliance being introduced, entities should ensure they are meeting all current reporting requirements of the Modern Slavery Act.

Reporting entities, and businesses generally, should also consider implementing grievance and remediation frameworks, or otherwise reviewing the effectiveness of existing remediation frameworks, as there is a likelihood that more detailed reporting on these mechanisms may become mandatory.

RECOMMENDATION	GOVERNMENT'S RESPONSE
Reporting threshold be lowered to a consolidated revenue of at least $50 million for the reporting period.[136]	***Noted.*** Not appropriate at this stage to lower the revenue threshold. The recommendation will be given further consideration once other key recommendations have been progressed.[137]
Mandatory reporting criteria be expanded to require reporting on: — **modern slavery incidents or risks identified by the entity during the reporting year;** — **grievance and complaint mechanisms made available by the entity; and** — **internal and external consultation undertaken by the entity during the reporting year on modern slavery risk management.[138]**	***Agreed in principle.*** The recommended changes will be considered, and the Attorney-General's Department (AGD) will undertake further consultation with stakeholders regarding the impacts of the proposed changes.[139]
Due diligence requirements be introduced requiring a reporting entity to: — **have a due diligence system in place; and** — **report on the activities undertaken by the entity in accordance with that system.[140]**	***Noted.*** The AGD will undertake consultations to identify how the Modern Slavery Act could be amended to enhance its due diligence requirements.
Penalties be introduced, making it an offence for a reporting entity to: — **fail to submit a modern slavery statement;** — **knowingly include materially false information in a statement;** — **fail to comply with a request from the Minister to take specified remedial action; and** — **fail to implement a due diligence system that meets the prescribed requirements.[141]**	***Agreed in principle, in part.*** The AGD will consult on the introduction and operation of civil penalties for: — failing to submit a modern slavery statement; — providing false information in a modern slavery statement; and — failing to comply with a request for specified remedial action.
The Australian Anti-Slavery Commissioner, appointed in November 2024, be empowered to make a written declaration of a region, location, industry, product, supplier or supply chain that is regarded as carrying a high modern slavery risk.[142]	***Agreed in principle.*** The Government will consult with stakeholders and the Anti-Slavery Commissioner on, and work towards, a model for written declarations, considering international law obligations, and potential implications for Australia's economy, trade, national security and foreign policy objectives.
An Anti-Slavery Commissioner be empowered to issue guidelines on special issues relating to the reporting requirements.[143]	***Noted.*** It is not preferable for separate official guidance to be issued by the AGD and the Anti-Slavery Commissioner.

/ COMMUNICATIONS

The Great Decoupling

Australia's fragile balancing act

Few generations witness the collapse of the world order that made them rich. Fewer still recognise it as it happens. Lenin's observation, 'there are decades where nothing happens; and there are weeks where decades happen', has rarely felt more relevant. The international system that secured Australian prosperity – American primacy, globalisation, and a rules-based international order – is breaking apart.

/ WORDS BY

Luke Heilbuth
CEO, BWD Strategic

Decoupling as destiny

Nowhere is this fracturing more evident than in the relationship between the United States and China – longtime trading partners turned systemic rivals. Both now seek not just dominance but the right to dictate the terms of a new global order.

China's rise has become the defining threat in American politics and one of the few issues that unites both parties on Capitol Hill. Secretary of State Marco Rubio's denunciation of Nixon's China détente, delivered during his confirmation hearing, sounded less like a critique and more like a eulogy:

"We welcomed the Chinese Communist Party into this global order. They took its benefits but ignored its obligations. Instead, they have lied, cheated, hacked and stolen their way to superpower status – at our expense."

Rubio went further, calling the post-war global order as 'not just obsolete' but 'a weapon being used against us'.

In a paradox of history, Beijing and Trump share the belief that the post-war global order is an obstacle to their ambitions. The United States no longer wishes to uphold it; China never accepted its constraints.

In the 1980s, Chinese leader Deng Xiaoping outlined a geopolitical strategy called 'hide your strength, bide your time'. Deng's approach, rooted in pragmatism, encouraged China to focus on internal development and avoid confrontation with the United States. The aim was to integrate China into the global order while quietly building the economic and technological capabilities required to overthrow it.

Xi Jinping believes that time has come. Like Trump, he sees the great decoupling not as tragedy but as destiny. Economist Jeffrey Sachs calls this emerging paradigm 'manufacturing nationalism' – a new, largely adversarial era of international relations where countries compete to dominate emerging sectors like semiconductors, AI and renewables.

Economist Jeffrey Sachs calls this emerging paradigm 'manufacturing nationalism' – a new, largely adversarial era of international relations where countries compete to dominate emerging sectors like semiconductors, AI and renewables.

The fracturing of global power

In the weeks since his return, Trump has made it clear that alliances exist only to serve American interests. His humiliating treatment of the Ukrainian President in the Oval Office was a moment of historical reckoning – one that will be replayed for decades as the symbolic end of the Pax Americana (1945–2024). The United States no longer sees itself as the steward of global stability, but as a sovereigntist power governed by a single, ruthless logic: America first, always.

The Trump Doctrine is not traditional isolationism, but strategic recalibration along three axes:

— Rewrite European security: trade away Ukraine's future for a Moscow-Washington consensus deal that splits Russia from China.

— Control Middle Eastern energy flows: ensure Chinese energy security remains at the mercy of the US-aligned Gulf States.

— Block Chinese military expansion into the Western Pacific: harden the first island chain, turning Taiwan into an unsinkable aircraft carrier.

The appointment of China hawks like Marco Rubio, Mike Waltz and Elise Stefanik into prominent foreign policy roles confirms the trajectory. This administration is not preparing for episodic competition with Beijing – it is preparing for full-spectrum confrontation.

China's industrial empire

For its part, China is building an empire of economic dependency. While Beijing lags Washington in critical semiconductor technology, Xi's signature *Made In China 2025* policy has unleashed a green-export juggernaut.

China's industrial policy – known as grand steerage – relies on massive State subsidies to dominate key sectors like solar panels, heat pumps, and electric vehicles. The aim is not simply competition but market capture: to make Chinese firms indispensable while eroding the industrial capacity of the United States, Germany, Japan and Korea.

By outcompeting rivals at scale, Chinese State-backed industries don't just win market share – they create structural dependencies, leaving nations beholden to Chinese supply chains in critical sectors. In response, Australia's $22.7 billion Future Made in Australia policy feels like a tin whistle trying to drown out an orchestra.

Beijing's mercantilist tactics to dominate the green economy and the increasingly bellicose neo-imperialism of the world's two superpowers reminds us that the global order of free trade and open competition we have enjoyed for three generations is fragile. As America and China entrench themselves in a new Cold War, the question for Australia is no longer whether decoupling will happen – but how prepared we are for its consequences.

Australia's existential dilemma

For three centuries, the global order has been shaped by the Anglo-American ideals we share: representative democracy, human rights, free markets, global maritime security, and (until Trump) globalisation itself.

But history reveals that an American-led world is an anomaly, not the default. From antiquity to the Industrial Revolution, China and India accounted for 50% of global trade. To Beijing, its return to great power status is less a new phenomenon and more a restoration of the natural order.

The contradiction of Australian prosperity is now exposed. Over 81% of our goods and services exports are bound for Asia, but our security and technology ties remain threaded in red, white, and blue. If our Asian trading partners and the Global South align with China, Australian multinationals face the prospect of navigating two rival trading blocs – each with its own rules, costs, and compliance burdens. This won't just disrupt supply chains; it will weaponise them.

If Trump appears willing to discard the deterrence effects of NATO, the most vital pillar of Western security, can we assume that ANZUS – a far less consequential treaty – will endure? As Washington shifts from economic engagement to coercion of friends and enemies alike, how do we insulate ourselves from the damage?

The assumptions that underpinned Australia's security and prosperity for generations are collapsing, and our margin for error is shrinking. As the 2024 National Defence Strategy makes clear, Australia must now chart a new course through a world divided. Recommendations include:

1. Build an Indo-Pacific security network beyond ANZUS: forge deeper bilateral and trilateral security agreements with Asian democracies like Japan, India and the Philippines, prioritising shared deterrence.
2. Invest in asymmetric deterrence: expand long-range missile capabilities, autonomous systems, and cyber warfare tools to make Australia costly to attack and impossible to ignore in our region.
3. Secure Australia's own defence production base: move beyond diversification to domestic capacity-building, ensuring defence supply chain independence.
4. Bolster energy security: reduce reliance on China-dominated renewables by securing alternative supply chains for critical minerals.
5. Embed deterrence into economic policy: leverage Australia's role as a critical energy and commodities supplier to shape trade terms that enhance, rather than erode, our strategic position.

The great decoupling is not a distant storm – it's here. Australia must master the squall or sink in its wake.

Luke Heilbuth is a former Australian diplomat and CEO of consultancy BWD Strategic.

/ ANALYSIS

From identifying to managing climate risk

The starting gun has fired for hundreds of Australian corporates captured under Group 1 of the AASB's climate reporting standards. Executives are rising to the challenge of identifying climate-related risk using climate scenario analysis and complex risk assessments.

/ WORDS BY

Liam Jouannon
Strategy Manager, BWD Strategic

Integrating climate into risk culture is the hardest integration but has the greatest impact. This goes beyond compliance training, embedding climate accountability into all relevant roles and decision-making processes.

Trump's re-election has amplified existing debate over the necessity and scope of corporate climate disclosure.

But the financial incentives attached to quality climate strategy and reporting remain compelling, regardless of which way the political winds blow. Businesses that successfully integrate climate considerations into their risk frameworks not only enhance resilience but also differentiate themselves in the eyes of investors. Chief Risk Officers (CROs) should prioritise embedding climate risk into assessments, controls and corporate culture.

Climate as a driver of risk

Integrating climate into risk assessment starts with recognising it as a driver of existing risks rather than a standalone category.[144] Climate developments rarely create unique risks but often influence the likelihood and consequence of existing risks. Using scenario analysis on a regular basis, organisations can identify the climate developments that are driving risk.

Risk teams should integrate these developments into the organisation's risk definition and assessment standards to enable leaders across the organisation to independently identify and assess climate-related risks.[145] Over time, the risk register will organically reflect the organisation's exposure.

Clarifying risk appetite

Once climate risks are identified, organisations should define their risk appetite. This involves CROs investing time in understanding their risk profile and educating their peers and board, including facilitating tough conversations on how much risk the organisation is willing to take in pursuit of its objectives.[146] These conversations should build on existing risk appetite statements, tweaking metrics, triggers, and limits to match the organisation's strategic goals and its exposure to climate-related developments.[147] Post consultation, the board should approve an updated risk appetite statement and communicate it across the organisation to clarify when and how the organisation is willing to take climate-related risk.

Building robust controls

Controls are where climate risk management becomes operational, enabling an organisation to take the most risk without compromising its resilience or shying away from climate developments. CROs should update their control management framework to design controls that reduce climate-driven likelihood and consequence.[148] This involves mapping controls to specific risks, regularly testing their effectiveness, establishing a process for identifying emerging climate risks, and incorporating findings into internal and external audits.

Climate and risk culture

Integrating climate into risk culture is the hardest integration but has the greatest impact. This goes beyond compliance training, embedding climate accountability into all relevant roles and decision-making processes.

Successfully embedding climate into risk culture enables an organisation to identify, assess, control and report climate-related risk as part of business-as-usual, freeing up change and project teams for the next innovation.[149] It requires on-the-job training, consistent engagement, and a clear alignment between climate objectives and corporate goals.

Turning compliance into opportunity

Mandatory climate reporting is a global challenge that presents an opportunity for risk-mature organisations to stand out on an even playing field. For those building their risk management framework for the first time, mandatory reporting is a call to action to improve your organisation's resilience and innovation in climate and all other domains of risk. Identifying risks is the baseline – managing them effectively is the differentiator. Start by defining and assessing your risks, setting a clear board appetite, building strong controls to manage risks, and fostering a climate-conscious and accountable culture.

/ **SUSTAINABILITY CALENDAR**

Sustainability Events and Conferences

A showcase of events to be inspired ... roll up your sleeves and get involved, and learn about incredible sustainability initiatives around the globe.

MARCH

Wall Street Green Summit

18–19 March 2025
Cornell Club New York, USA

One of the most comprehensive sustainable finance events worldwide, showcasing cutting-edge insights and industry advancements. The Summit will focus on Climate Tech Investing & Reporting, Carbon Markets and Finance, Clean Energy solutions for climate change, and Greening Clean Transportation.

thewallstreetgreensummit.com

The Impact Investing Summit

26–27 March 2025,
Sydney, Australia

Hear from super funds and Government institutions about their existing exposures to positive impact assets and companies to determine how they allocate capital. The streams will cover Climate & Environment/ClimateTech, Communities, Aged care, built environment, Education/EdTech and Healthcare.

impactinvestmentsummit.com/2025-program/

APRIL

Embedding circularity into Brisbane 2032

Mon, 7 April 2025
12pm–1:30pm AEST Online Event

With Brisbane 2032 fast approaching, join us for a lively and interactive session exploring the circular economy as a catalyst for a sustainable Olympic legacy. Ashleigh Morris, CEO and Co-Founder of circular economy consultancy Coreo, will share her vision for Brisbane 2032 and challenge us to help create the first Olympics to truly embed circularity, from design, through execution, to a legacy that delivers recurring value. The session will also delve into real-life examples that showcase circularity as a powerful driver of value and resilience.

https://events.humanitix.com/embedding-circularity-into-brisbane-2032

APRIL

Deriving business value from sustainability

2 April 2025
New York, USA

BWD North America CEO, Alex Gold, moderates this forum collated by the Columbia Business School Alumni Club. Companies across industries have invested a lot of resources in sustainability over the last few years. Pressure from investors, regulators, customers and employees has compelled leaders to take sustainability seriously. Sustainability activities – such as reporting, risk analysis and climate action planning – are often viewed by senior leadership as a cost of doing business, not an investment in value. But what is the value of sustainability efforts in the context of core business strategy?

cbsacny.org/events/EventDetails.aspx?id=1942747&group=EarthX2025

MAY

Impact X

20–21 May 2025
Melbourne, Australia

The 2nd Impact X Summit for ESG Reporting & Disclosure will gather business leaders, finance directors and sustainability practitioners to address the increasingly complex developments in sustainability disclosures. Learn how to navigate these complexities to drive improved ESG and business performance.

impactx.earth/esg-summit

MAY

Nature Conservation Council Bushfire Conference

21–23 May 2025
Sydney, Australia

Can we burn to learn? Sustaining people, nature and Country – Why do we choose to burn and, when and how can we best gain wisdom from using fire in different vegetation types to protect what we most care about. Two days of presentations by leading academics, practitioners, Traditional Owners, agencies and communities to explore why, when and how we can best use fire across landscapes to protect what we most care about.

nature.org.au/bushfire_conference_2025

IMFN Global Forum

26–30 May 2025
Kemptville, Canada

The International Model Forest Network (IMFN) will be hosting a Global Forum attracting up to 200 delegates representing over 60 Model Forests from around the world. The IMFN Global Forum is a business, technical and networking meeting in which members share knowledge, review their accomplishments, address challenges and agree on Network–wide and other strategic plans and initiatives for the three–year period following the Global Forum.

imfn.net/forum/

JUNE

2025 UN Ocean Conference

9–13 June 2025
Nice, France

The Conference aims to support further and urgent action to conserve and sustainably use the oceans, seas and marine resources for sustainable development and identify further ways and means to support the implementation of SDG 14. It will build on existing instruments to form successful partnerships towards the swift conclusion and effective implementation of ongoing processes that contribute to the conservation and sustainable use of the ocean.

sdgs.un.org/conferences/ocean2025

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