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ISSUE FIVE **SEPTEMBER 2024**

SUSTAINABILITY INSIGHTS

A strategic review of the latest in sustainability policy and practice

GILBERT + TOBIN

BWD Strategic

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BWD AND GILBERT + TOBIN PRESENT A STRATEGIC REVIEW OF THE LATEST IN SUSTAINABILITY

/ OUR CONTRIBUTORS

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Harnessing data for a nature-positive future

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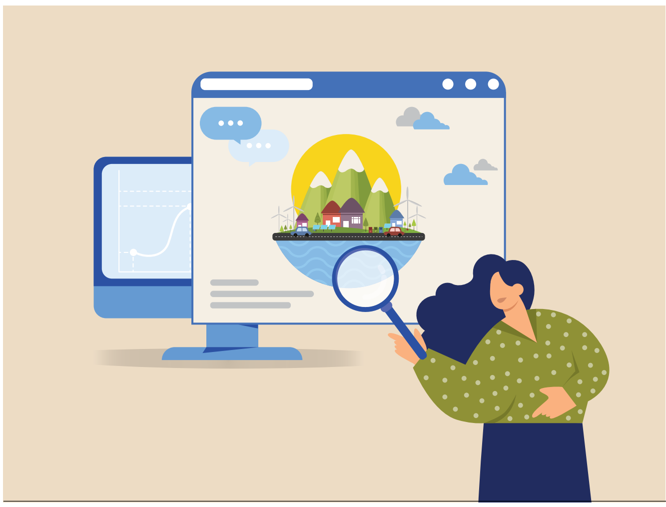
We must transform the way we interact with our environment, and data is emerging as a powerful tool in guiding these efforts.



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Mandatory sustainability reporting

What you need to know

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What are the latest regulatory developments, what are the related business risks and what should companies do next?

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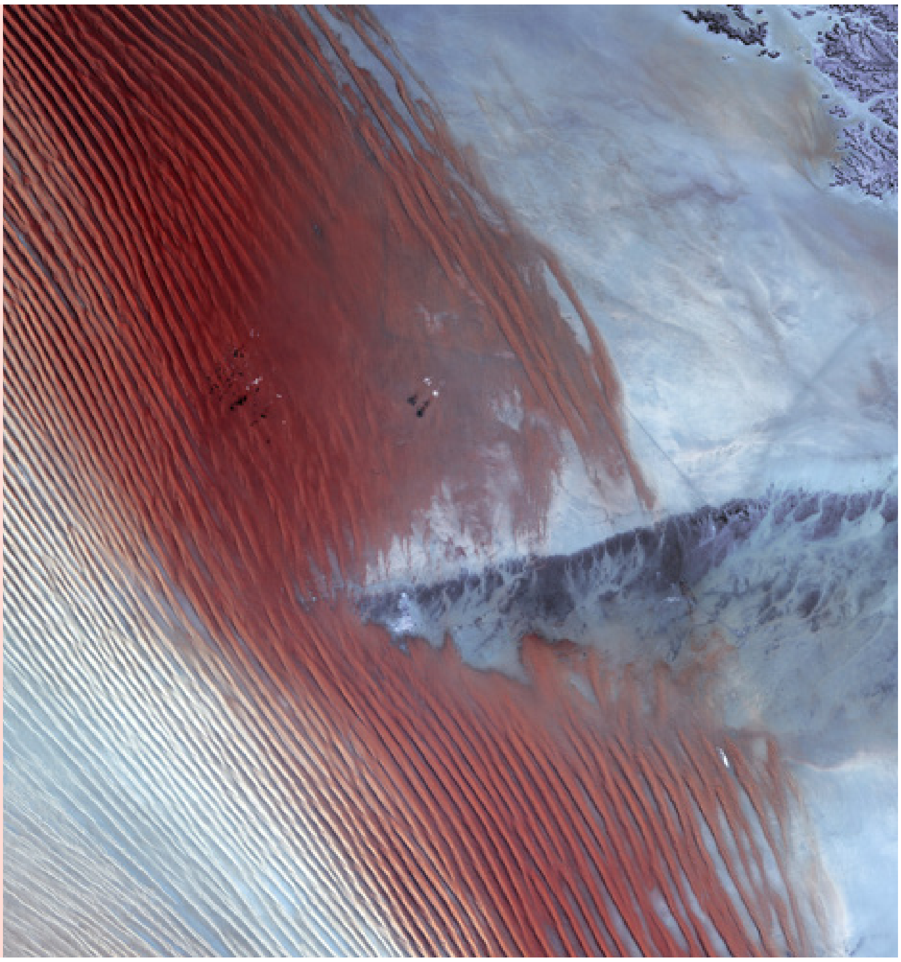

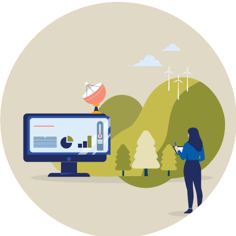

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Nature and biodiversity

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Detailed summary of the latest PRI guidance for Australian businesses.

/ TREND WATCH

2024-2025 Federal Budget Update – where is the Government spending money?

On 14 May 2024, Treasurer Jim Chalmers delivered the 2024-2025 Federal Budget[1]. Amongst a variety of other spending measures, the 2024 Budget promises funding for an array of ESG measures to advance Australia's decarbonisation commitments and; climate policy and strengthen its renewable energy supply chains. This article outlines the key ESG-related budget items and their implications for Australian businesses. For further detail on the 2024 Budget see Gilbert + Tobin's Knowledge Insight.

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A new pathway: A Future Made in Australia

The key ESG Budget item was the 'Future Made in Australia Policy', with a total of $22.7 billion to be allocated over the next decade to implement a Future Made in Australia Plan (**Plan**), directed towards maximising the economic and industrial benefits of the transition to net zero and securing Australia's place in a changing global economic and strategic landscape. The Plan involves the establishment of a National Interest Framework (**NIF**) to identify priority industries for investment across two streams:

- *net zero transformation stream:* industries that can make a significant contribution to achieving net zero and in which Australia has the means to build an enduring competitive advantage; and
- *economic security and resilience stream:* sectors that are critical to Australia's resilience, and which are vulnerable to supply disruptions.

On 3 July, the *Future Made in Australia Bill 2024* (Cth) (**Future Made in Australia Bill**) was introduced to the House of Representatives to establish the NIF[2], and on 22 August a second reading of the Future Made in Australia Bill was agreed to. The Future Made in Australia Bill provides that the Minister would be able to direct assessments to be undertaken of sectors within the Australian economy to analyse the extent to which those sectors align with the NIF. Five industries have been identified by the government as falling within the NIF: renewable hydrogen, critical minerals processing, green metals, low carbon liquid fuels and clean energy manufacturing (including solar and battery supply chains). The Future Made in Australia Bill provides for a Future Made in Australia Innovation Fund from which the Government will distribute financial support to NIF-aligned sectors.

THE KEY ESG BUDGET ITEM WAS THE ‘FUTURE MADE IN AUSTRALIA POLICY’, WITH A TOTAL OF $22.7 BILLION TO BE ALLOCATED OVER THE NEXT DECADE

Renewed support for clean energy technology manufacturing

The budget announced a $1.4 billion investment over 11 years in support of clean energy manufacturing initiatives. This includes $835.6 million over 10 years to establish the Solar Sunshot program administered by Australian Renewable Energy Agency (**ARENA**) to promote the development of solar manufacturing capabilities across the solar PV supply chain.

This initiative is complemented by a $549 million investment over eight years from 2024 to support battery manufacturing which includes the Battery Breakthrough Initiative. Also administered by ARENA, it is designed to promote the development of battery manufacturing capabilities through production incentives targeted at the highest value opportunities in the supply chain[3]. With demand for batteries set to quadruple by 2030, the Australian Government has signalled that “batteries are a critical ingredient in Australia’s clean energy mix.”[4]

New Vehicle Efficiency Standard introduced

The Budget announced a $1.4 billion investment towards domestic efforts to reduce greenhouse gas emissions including the introduction of a New Vehicle Efficiency Standard. To this end, the *New Vehicle Efficiency Standard Bill 2024* (**Vehicle Efficiency Bill**) was enacted on 31 May 2024[5]. The Vehicle Efficiency Bill establishes a new vehicle efficiency standard (**NVES**) to regulate the carbon dioxide emissions of new passenger and light commercial vehicles. The NVES is intended to commence on 1 January 2025, with compliance requirements to come into effect from 1 July 2025. Distinct from a tax, the NVES is a policy mechanism designed to incentivise the provision of new passenger and light commercial vehicles with lower carbon emissions.

This investment in the NVES, although small by international standards, is another advancement in the transition toward carbon efficient vehicles. It is likely to incentivise more manufacturing and demand for lower emissions vehicles, and costs savings from lower fuel prices. Key components of the supply chain for electric vehicles, such as batteries that are manufactured in Australia, will also see an increase in demand.

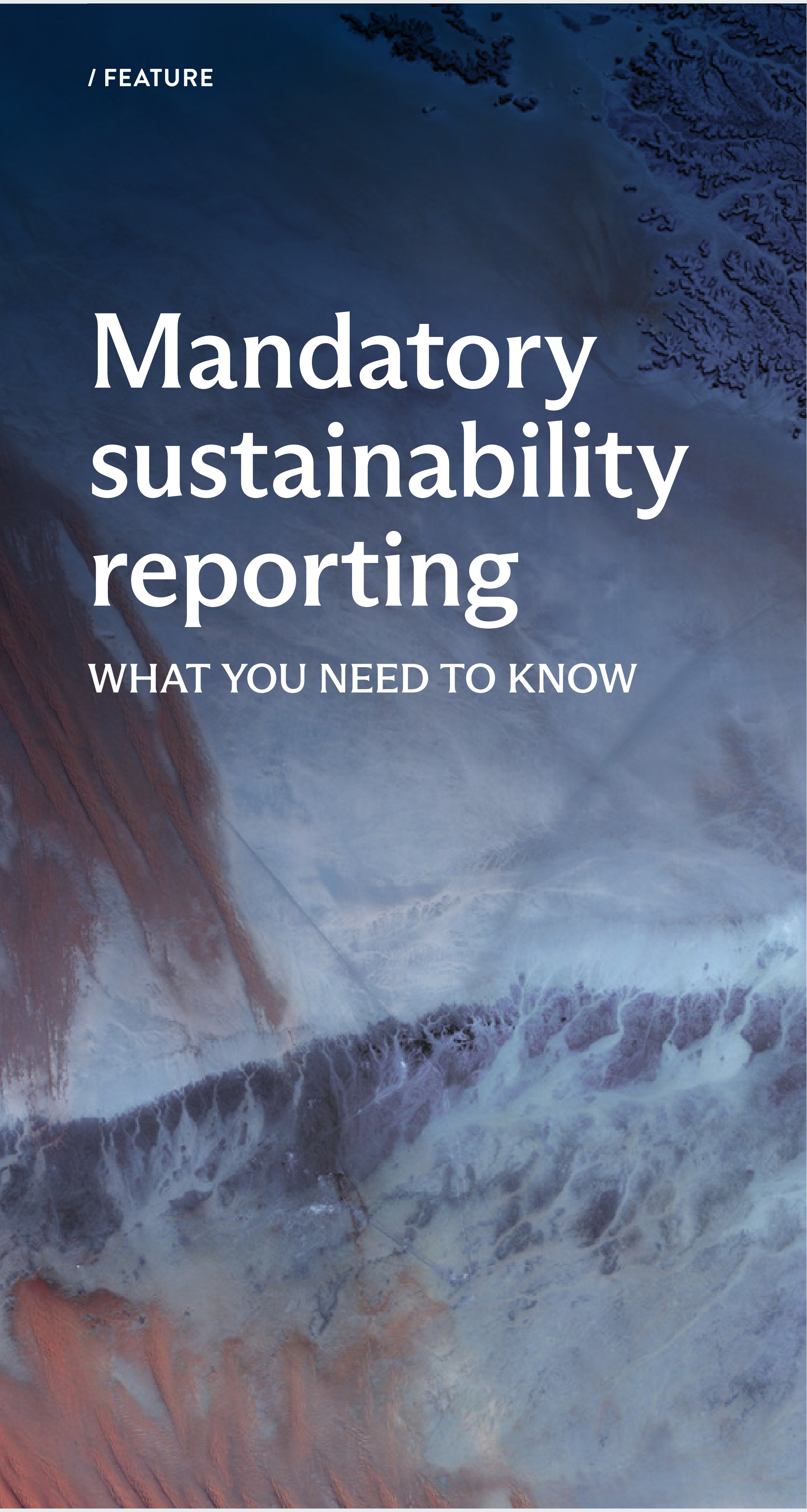
Advancing climate change and sustainability incentives

The 2024 Budget announced numerous other initiatives designed to enhance Australia’s transition towards net zero, including:

- $17.3 million to promote the development of sustainable finance markets;
- $10 million for additional resourcing for the Australian Securities and Investments Commission (**ASIC**) to investigate and take enforcement action against greenwashing and other sustainability-related financial misconduct;
- $5.3 million for Treasury, ASIC and Australian Prudential Regulation Authority (**APRA**) to deliver the sustainable finance framework, including issuing green bonds, improving data and engaging in the development of international regulatory regimes related to sustainable finance; and
- $96.6 million for the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) to strengthen environmental approvals, deliver additional regional plans, and undertake scientific studies to improve the environmental data used in decision making.

Supporting Australia as a leader in global decarbonisation efforts

By providing investment and tax incentives to renewable energies and lower emissions industries, the Government is strengthening Australia’s industrial capabilities and the competitiveness of clean energy industries. These measures are anticipated to unlock significant private sector investment, driving innovation and large-scale production of renewable energies, contributing to Australia’s commitment to achieve net zero emissions by 2050 and ensuring that Australia not only meets its domestic energy needs but also becomes a major exporter of renewable energy and related technologies, such as batteries and solar inputs.



/ FEATURE

Mandatory sustainability reporting

WHAT YOU NEED TO KNOW

/ WORDS BY

Luke Heilbuth
CEO, BWD Strategic

It's an interesting time in sustainability.

On one hand, we're seeing an increase in politicisation, with US Republicans influencing a growing global movement that equates ESG with woke capitalism.

On the other, mandatory climate reporting in many jurisdictions is compelling organisations to place climate at the heart of their strategy and business models.

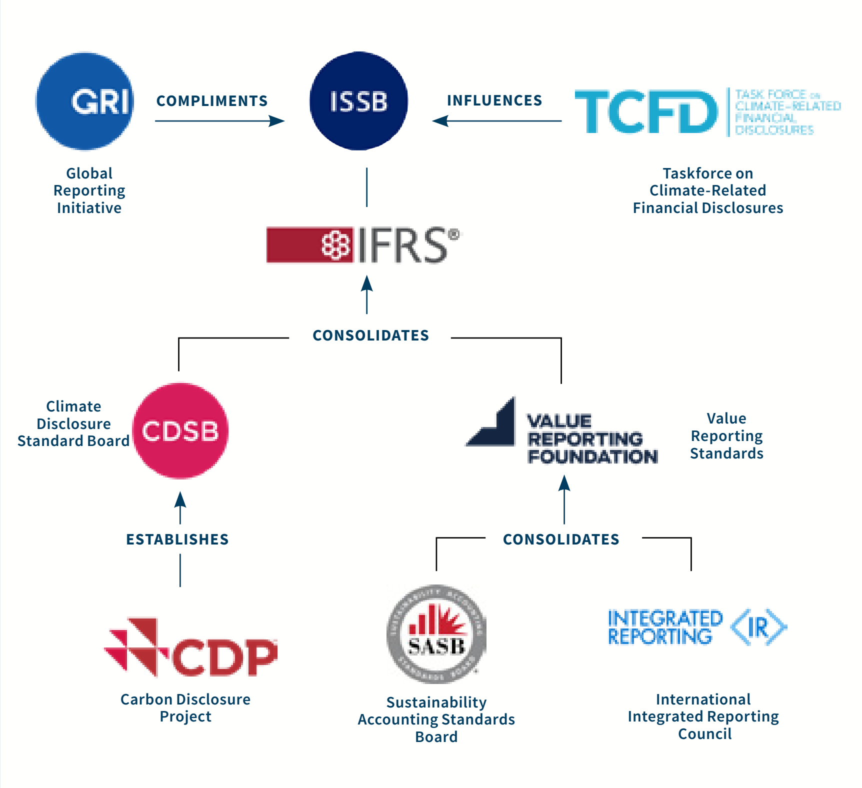
What happens when the immovable object of American political influence meets the irresistible force of the law?

We'll need to navigate political blowback, heightening investor and regulatory expectations, and the implementation challenges that come with taking climate change seriously.

This guide will get you started. It steps through the latest regulatory developments, explains the key risks you should be considering, and provides some guidance on what to do next.

PART ONE

What are the latest regulatory developments?



No more alphabet soup

Australian businesses now have certainty on where to find best practice guidance for sustainability reporting: The International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI).

The ISSB is the most important. It has ushered in a new era of reporting by creating two new sustainability standards called IFRS S1 and S2. We won't focus on GRI in this paper because it does not underpin mandatory Australian legislation like the ISSB does.

What are the new IFRS Sustainability Standards?

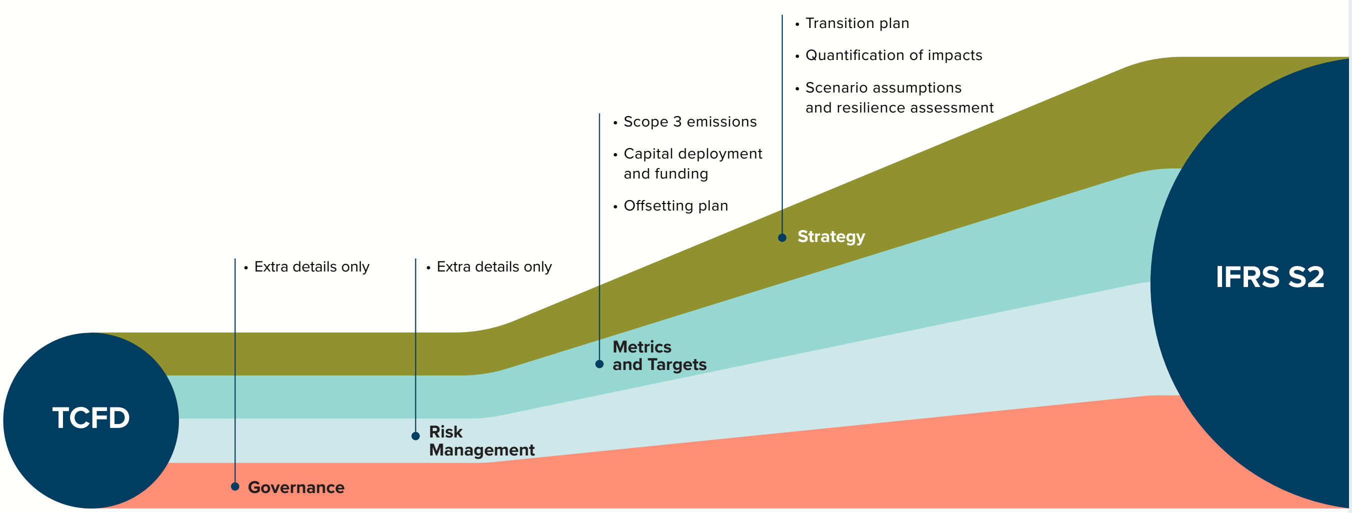
IFRS S1 sets the stage for disclosures related to *general* sustainability risks and opportunities. It aims to help investors make better investment decisions. IFRS S2 dives into *climate*-related disclosures, offering guidance to align a company's strategy and reporting with the urgent need for climate action.

The TCFD voluntarily disbanded in October 2023, but its intellectual property is contained within IFRS S2.

Both Standards require a company to report on four pillars in their sustainability disclosure: Governance, Strategy, Risk Management and Metrics and Targets.

In April 2024, the ISSB voted to add biodiversity and human capital to its two-year work plan. Any new standards won't be finalised until at least 2026. For now, the organisation is focused on implementing IFRS S1 and S2.

HOW IFRS S2 DIFFERS FROM THE TCFD



How does the ISSB influence Australian legislation?

Australia is finalising the implementation of the ISSB guidance in policy and practice through new legislation and the introduction of the Australian equivalents of IFRS S1 and S2 – ASRS S1 and S2 – which passed through the Senate in August 2024.

The Australian Standards will align with IFRS S1 and S2 to ensure consistency with global sustainability disclosures. The mandatory component of the Australian Standards (ASRS S2) only focuses on climate-related disclosure. Entities can choose to report against the non-mandatory ASRS S1, which covers sustainability issues beyond climate (ASRS S1), but must disclose them in a separate document. Major uplifts for companies include the need to disclose a transition plan, the current and anticipated financial impacts of climate risks, and the need to conduct a climate resilience assessment against at least two scenarios; one of which must be consistent with 1.5°C.

The legislation takes a phased approach to implementation. 'Group 1' entities must prepare disclosures for financial years that commence from 1 January 2025; 'Group 2' entities from 1 July 2026; and 'Group 3' entities from 1 July 2027.

Given more than 6,000 Australian entities must report under these new climate-related disclosure requirements (and more than 20,000 by FY2028), you should prepare now to ensure your organisation is ready for what ASIC calls a once-in-a-generation change.

SUMMARY OF REGULATORY DEVELOPMENTS

- ISSB, GRI are most relevant for Australian reporters.
- IFRS S1 and S2 designed to help investors make better decisions.
- New legislation requires a major uplift in climate strategy and reporting.

ENTITY	Entity and their controlled entities meet at least two of the three thresholds			Report from first financial year commencing on or after
	Consolidated revenue for the financial year	Consolidated gross assets at EOFY	Full-time equivalent employees at EOFY*	
GROUP 1				
Large entities and their controlled entities	$500 million or more	$1 billion or more	500 employees or more	1 January 2025
NGER reporting entities**	Above the publication threshold in s 13(1) of the NGER Act. The main thresholds are: 1: 50 kt of greenhouse gas emissions; 2: 200 TJ of energy produced; or 3: 200TJ of energy consumed.			
GROUP 2				
Large entities and their controlled entities	$200 million or more	$500 million or more	250 employees or more	1 July 2026
NGER reporting entities	NGER reporting entities that do not meet the above NGER publications thresholds.			
Asset owners	N/A	$5 billion or more	N/A	
GROUP 3				
All other in-scope entities	$50 million or more	$25 million or more	100 employees or more	1 July 2027

* Part-time employees are to be included as an appropriate fraction of a full-time equivalent employee.

** NGER reporting entities are corporations registered under the *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) at the end of the financial year, or corporations required to make an application to be registered under subs 12(1) of the NGER Act for the financial year.

Climate-related financial disclosures will sit within a sustainability report, which will form the fourth report required as part of annual financial reporting obligations and be contained in an entity's annual report.

Treasury's Policy Position Statement

PART TWO

What are the related business risks?

This legislation is transformational for climate action. Until recently, it was unthinkable that the law would compel every major company to assess, manage and report on the implications of climate change. As ASIC Chair Joe Longo says, action must also be taken now.

"You have to do this now. It's simply not an option to put this off until after legislation has passed, and then scramble to comply. You have to figure out how you're going to marshal data, support and capabilities and start keeping the necessary records now – today."

Given the scale, pace and complexity of the change, corporate boards and executive teams are rightly apprehensive about the risks of this new regime. There are at least three to consider:

1. Implementation risk
2. Integration risk
3. Data risk

1. Implementation risk

The risk of failing to meet new legislative requirements

The principal risk facing your company is failing to meet the new legislative requirements, which are expected to be legislated by August 2024.

Report preparation and lodgement

Companies must disclose their climate-related financial disclosures in a new 'sustainability report', not in their financial and/or directors' report.

It *must* be called a 'sustainability report', even though only climate disclosure is currently required. The Government did not listen to industry feedback calling for flexibility in naming (you cannot, for example, call it a 'climate report').

Our view is that this sustainability report can either be housed as a discreet 'chapter' within a consolidated annual reporting document (clearly labelled as such) or as a standalone document lodged at the same time as the rest of the annual reporting suite.

The sustainability report must also be publicly available on the company website on lodgement day. For publicly listed companies, it must be available for shareholder scrutiny ahead of the Annual General Meeting.

Report content and record keeping

You *can* include non-mandatory sustainability information – such as content on nature or diversity – in your sustainability report, provided it is clearly distinguished from the mandatory requirements of the ASRS S2 Standard as a 'separate voluntary statement'.

The ASRS has advised us that cross-referencing is permitted under the ASRS Standards, which means you don't have to replicate numbers from the financial statements into the sustainability report. But make sure you provide clear links to ensure readers can easily find the financial information they need.

You *do not* need to disclose information that is commercially sensitive or requires 'undue cost or effort' to disclose. The latter is intended to relieve the reporting burden on smaller organisations. It is unlikely to be relevant for larger businesses, which are expected to have the resources for meaningful compliance.

For Group 1 entities, limited assurance is required for scope 1 and 2 GhG emissions from 1 January 2025. Disclosing scope 3 emissions is required from the entity's second reporting period (but limited assurance is only required from 2030). The assurer should be the same as the one used for your financials. An audit of *all* climate disclosures in the sustainability report will be required from 1 July 2030.

Finally, you must keep records that reflect how you prepared your sustainability report for potential regulatory review for seven years, and notify ASIC (only required in the first year) where the records are kept. Failure to maintain sustainability reporting records carries a maximum penalty of two years' imprisonment, so adherence is critical.

KEY TAKEOUTS

- **Disclosures must be made in a sustainability report.**
- **The same auditor of your annual report must provide limited assurance of your scope 1 and 2 emissions (scope 3 from 2030).**
- **You must keep records of report preparation for regulators.**

Penalties for non-compliance

The Corporations Act will be amended to include civil penalties and fines for non-compliance, enforced by ASIC. That said, the regulator has said it will take a pragmatic approach to supervision and enforcement of the regime. It will also issue future guidance to help you meet your obligations.

In the first instance, if ASIC considers a statement in your sustainability report to be incorrect, incomplete or misleading, it may direct you to correct, complete or provide further information. Not complying with an ASIC direction attracts a maximum penalty of 60 penalty units ($18,780 as of July 2023).

Companies will be exempt from *private* lawsuits for misleading or deceptive reporting claims in relation to scope 3 emissions or scenario analysis until 30 June 2027. But enforcement action can still be taken by ASIC on these areas.

Be aware, too, that activists may seek to lobby ASIC directly, presenting a detailed case for non-compliance with the aim of initiating enforcement action. Australia is potentially the world's most litigious jurisdiction for climate action on a per capita basis. In 2023, there were at least 127 judicial proceedings involving climate change.

KEY TAKEOUTS

- **ASIC will take a 'pragmatic' approach to enforcement.**
- **Companies are immune from private lawsuits on scope 3 and scenario analysis until 2027.**
- **No immunity for other topics, or statements made outside the sustainability report.**

2. Integration risk

The risk of ineffective collaboration between sustainability and other functions

Sustainability strategy was once viewed by many as a subset of marketing; the chance to build a brand-bolstering narrative around a company's commitment to stakeholders. Mandatory reporting creates a new imperative for companies to place climate change at the core of strategy, closing gaps in implementation, integration, data and capital allocation in the process.

The days of the siloed sustainability function working in isolation to produce a good news report full of tree-planting and charity handshakes are over. Sustainability is reaching its full potential as a core driver of value creation, with companies needing to deploy multiple functions and skillsets to explain how climate and other key sustainability themes create or erode financial value.

The sustainability report is simply the output of the internal work required to ready a corporate strategy and business model for a more sustainable future; a case of the tail wagging the dog. We shouldn't underestimate the difficulty of this internal transformation, which requires sustainability, finance, legal, technology, strategy, risk, and investor relations teams – as well as the C-suite and board – to work as one.

Things can go easily go wrong. Examples of ineffective collaboration include:

- **Inaccurate financial data: Finance does not review the numbers in claims made within the sustainability report.**
- **Inadvertent greenwashing: Legal does not evaluate net zero or similar environmental claims, which are inadvertently deceptive or misleading.**
- **Misaligned technology investment: IT makes a large technology investment which fails to collect the right sustainability data.**
- **Misaligned strategic execution: Sustainability and corporate strategy pursue separate agendas, meaning sustainability goals are not integrated into enterprise strategy.**
- **Insufficient visibility of ESG risks: The risk team fails to incorporate emerging ESG risks into the risk register because they weren't involved in the materiality assessment.**

These common mistakes can lead to regulatory sanction, a lawsuit and/or the loss of investor confidence. Your company should regularly review each of these integration risks to make sure they don't become major issues.

KEY TAKEOUTS

- **Legislation makes climate change a strategic imperative for every business.**
- **Compliance will require extensive cross-functional collaboration.**
- **Report is only the output; real work is in transformation of strategy and business model.**

3. Data risk

The risk of collecting data without follow-up action

Companies need timely, verifiable data at the right level of precision to mitigate the risk of reporting non-compliance *and* to seize opportunities associated with deploying sustainability in the pursuit of long-term value creation.

Examples of sustainability initiatives requiring high-quality data include gender pay gap reviews, modern slavery risk assessments, climate scenario analyses, decarbonisation roadmaps and LEAP assessments under the Taskforce for Nature-related Financial Disclosures.

Data collection without follow-up action is pointless. As US thought leaders Alison Taylor and Bob Eccles argue, collecting and reporting on data can create a false impression that senior teams are focusing on the strategic value of sustainability when they are not.

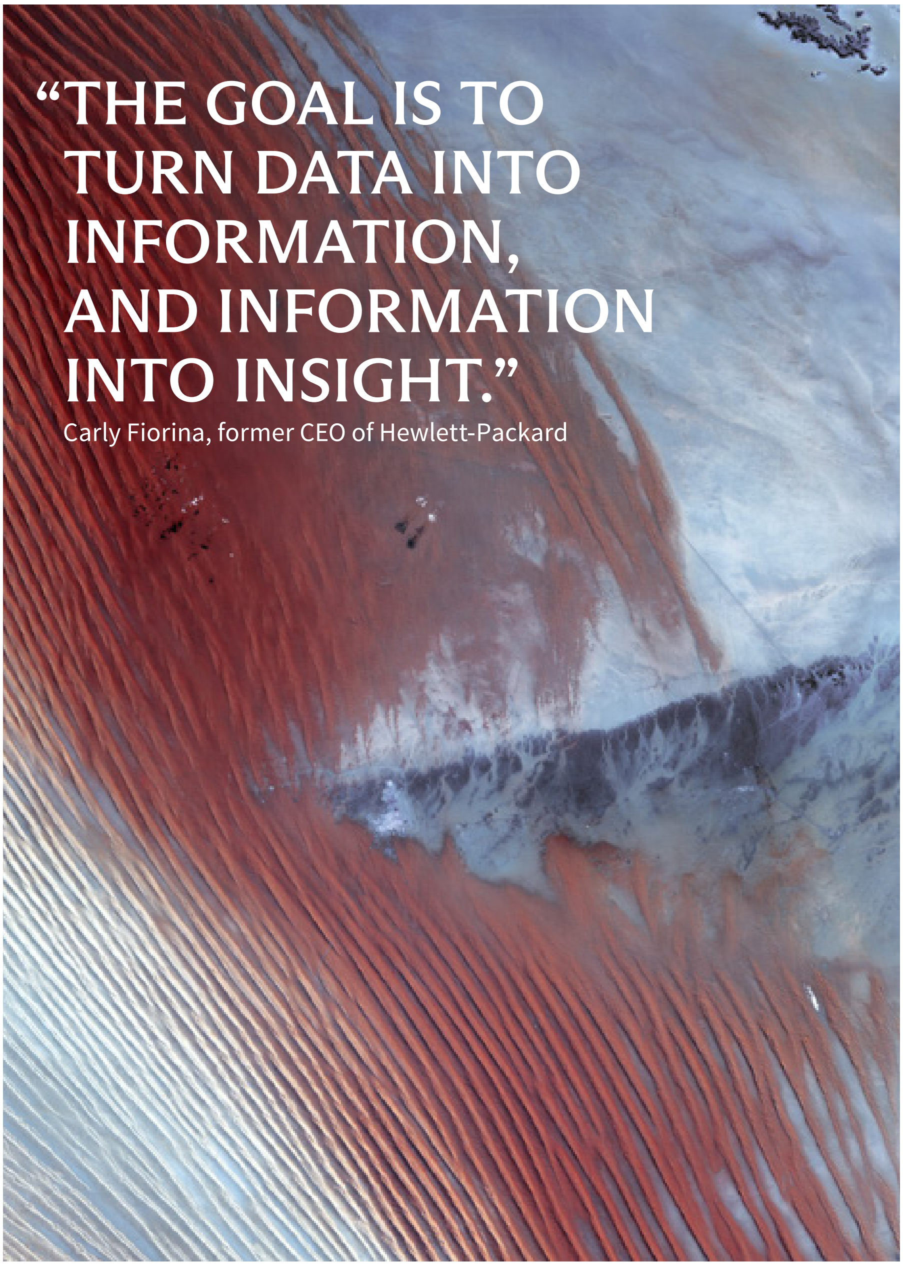
Instead, teams need sufficient resources and upskilling on how to feed sustainability data into board and other decision making processes to drive better decision making, especially in relation to capital allocation.

KEY TAKEOUTS

- **Companies need verifiable data to mitigate sustainability risks and seize opportunities.**
- **Data collection without follow-up action is pointless.**
- **Data must be converted into insights that support better decision making.**

SUMMARY OF KEY RISKS

- **Implementation: Legislative and ASRS guidance is onerous but clear.**
- **Integration: Sustainability is a strategic imperative; requires cross-functional collaboration.**
- **Data: Collection is only a starting point; the goal is better strategic decision making.**



PART THREE

What should companies do next?

Applying the new legislation and accompanying ASRS guidance in practice will take a lot of work, even for companies long used to climate strategy and disclosure. Regardless of your level of climate maturity, BWD suggests a four-step process to set you up for success.

Step 1. Prepare

- **Gap analysis**
- **Double materiality assessment**

Start by conducting a gap analysis comparing your current reporting practices against the informational, presentation and procedural needs of ASRS S1 and S2. The review should cover annual and sustainability reports, TCFD statements and internal policies. Gaps, once identified, should then inform an ASRS compliance roadmap.

Second, we strongly recommend commissioning a double materiality assessment. The approach should align with IFRS/ASRS guidance on identifying sustainability-related risks and opportunities, as well as the GRI, which provides the best methodology for identifying stakeholder impacts.

While the IFRS Chair has advocated for a single (financial) materiality approach, ISSB guidance is consistent with double materiality, and it remains the foundational strategy of choice among most sustainability leaders, including because double materiality is mandatory under European law.

Step 2. Educate

- **Board, senior management and all other internal stakeholders**
- **Directors' declaration**

The board, management and all internal stakeholders should be briefed early on how and when the mandatory reporting obligations will apply. Board members should be clear on the responsibility they will assume when providing a directors' declaration on the accuracy of the climate-related financial disclosures in the sustainability report.

For the first three years, directors can simply declare that the entity has taken reasonable steps to ensure that the sustainability report has been prepared in accordance with the Corporations Act.

After three years, though, directors must declare that the report complies with the ASRS *and* discloses all material climate-related financial risks and opportunities relevant to their organisation.

DIRECTORS' DECLARATION

1.52 The directors' declaration is a declaration by the directors of their opinion on whether the statements are in accordance with the Corporations Act, including in compliance with the relevant sustainability standards (i.e. whether the climate statement is in compliance with the sustainability standards that relate to climate). These declarations must be made with a resolution of the directors, dated and signed.

From the Treasury Laws Amendment Bill 2024: Climate-related Financial Disclosure, Exposure Draft Explanatory Materials

Step 3. Embed

— **Governance processes**

— **Data systems**

New governance arrangements are likely needed to oversee reporting implementation, integration and quality control. Arrangements should focus on creating a cross-functional delivery team with expertise from sustainability, finance, legal and technology.

Sustainability professionals are good at explaining the strategic value of sustainability, while finance, legal and IT colleagues will help ensure disclosures are accurate and avoid inadvertent greenwashing, especially where forecasts and forward-looking statements are made.

Data is crucial. The reporting delivery team should help develop systems capable of maintaining timely and precise data flows to support a wide array of disclosures. Examples include aligning physical and transition risks and opportunities with cash flow, access to finance and cost of capital projections, and scope 3 emissions monitoring and reporting, which require a reliance on third-party data. Access to scope 3 data should be secured up front, as part of contractual arrangements with supply chain partners where possible.

Step 4. Enact

— **Start early, get resources**

— **Stay on top of developments**

Ideally, the above steps should be enacted nine months before the lodgement date of the mandatory sustainability report. Make sure senior decision makers understand they will need to allocate more resources to the reporting effort, especially in the first year.

For many companies, this will include a need for external advisory support to feel confident about meeting their legislative obligations.

We strongly recommend drafting a communications strategy post the report's release, as the enhanced detail and comparability of this new regime will expose companies to even greater climate scrutiny from investors, regulators and activists.

Finally, staying on top of developments is key, given the draft legislation anticipates the expansion of reporting requirements beyond climate disclosures to broader environmental matters, such as nature-related financial disclosures. The ongoing evolution of the ASRS has been referred to as 'climate first, but not only'.

SUMMARY

PART ONE

What are the latest regulatory developments?

Only ISSB (IFRS S1 and S2), GRI especially relevant for Australian reporters.

IFRS S1 and S2 designed to help investors make better decisions.

Australian law and Standards broadly reflect the ISSB, close to finalisation.

PART TWO

What are the related business risks?

Implementation

Integration

Data

PART THREE

What should companies do next?

Prepare

Educate

Embed

Enact

/ IN DEPTH

An update on Australia's mandatory climate reporting standards

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On 9 September 2024, the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024 (Treasury Bill) finally passed the Australian Parliament, bringing into effect mandatory climate-related financial disclosures from 1 January 2025.

This follows the passage of the Treasury Bill by the Senate on 22 August 2024, with the minor amendments made by the Senate now approved by the House of Representatives.

The Bill was first introduced to the House of Representatives on 27 March 2024, following the consultation period earlier this year on the 'Treasury Laws Amendment Bill 2024: Climate-related Financial Disclosure' (**Exposure Draft**). On 27 March 2024, the Federal Government introduced the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024* (Cth) (Treasury Bill) to Parliament[6]. Schedule 4 to the Treasury Bill introduces the highly anticipated, and now imminently forthcoming, mandatory climate risk disclosure framework for large Australian entities.

On 22 August 2024, the Senate passed the Treasury Bill with only minor amendment to Schedule 4 in relation to scenario analysis disclosure requirements. The Treasury Bill went back to the House of Representatives for a vote on the amendment made by the Senate. As expected, in light of the government's support for the Treasury Bill in the Senate, on 9 September 2024, the Treasury Bill as passed by the Senate officially passed both Houses of Parliament. The Treasury Bill will now be presented to the Governor-General for Royal Assent. Once enacted, the Treasury Bill will require entities that lodge financial reports under Chapter 2M of the *Corporations Act 2001* (Cth) (**Corporations Act**) and meet certain thresholds – or have emissions reporting obligations under the National Greenhouse and Energy Reporting scheme – to submit a sustainability report disclosing climate-related risks and opportunities in accordance with sustainability standards being developed by the Australian Accounting Standards Board (**AASB**).

Key Aspects of the Treasury Bill

The Treasury Bill largely aligns with the Exposure Draft, except for the following key differences, which have now been passed by the Senate:

- *delayed commencement:* the mandatory disclosure requirements will now be phased in from 1 January 2025;
- *transitional period for directors' declarations:* for the first three years of the regime, directors who are required to provide a declaration alongside a sustainability report will only need to provide an 'opinion' on whether the entity took reasonable steps to ensure the substantive provisions of the sustainability report are in accordance with the Treasury Bill;
- *modified liability approach:* 'protected' statements made within sustainability reports and auditors' reports will be protected from misleading and deceptive conduct claims for the first three years, unless the claim is made by ASIC. This temporary immunity will also apply to forward-looking statements within the first 12 months of the regime;
- *greenhouse gas (**GHG**) emissions:* the definitions for scope 1, 2 and 3 GHG emissions have been amended to align with the definitions included in AASB's forthcoming Australian Sustainability Reporting Standards (**ASRS**) (a draft of which was released last October); and
- *climate disclosure standards:* will be subject to the Auditing and Assurance Standards Board's (**AUASB**) forthcoming assurance requirements (a draft of which was released in March).

For a detailed overview of all aspects of the Treasury Bill as introduced to the House of Representatives, and now passed by the Senate, including which entities will be required to report and when, and what the reports will need to contain, see our Gilbert + Tobin Knowledge Insight.

Status of the Treasury Bill and amendments in the Senate

When the Treasury Bill was first introduced to the House of Representatives in March, it was referred to the Senate Economics Legislation Committee for inquiry and report. That report was released on 3 May 2024, with the majority recommending the passage of the Treasury Bill without amendment and, despite some minor recommended changes, overall support from the opposition and independent senators. The Treasury Bill was subsequently read twice in the House of Representatives and passed without amendment.

On 24 June 2024, the Treasury Bill was introduced and read for a first time in the Senate. Here, the Federal Government proposed the addition of two new subsections 2A and 2B to section 296D 'Climate statement disclosures'. As outlined in the Supplementary Explanatory Memorandum, these amendments are intended to align the requirement to conduct a scenario analysis with the ASRS.[7]

A scenario analysis is the process of identifying and assessing a potential range of outcomes of future events under conditions of uncertainty. The ISSB climate-related disclosure standards and the Australian equivalent draft ASRS require that scenario analysis be undertaken to inform disclosures about the climate resilience of an entity's strategy and business model to both transition and physical climate-related risks. The draft ASRS specify that where an entity is required to report under the Treasury Bill, it must disclose its climate resilience assessments against at least two relevant possible future states, one of which must be consistent with the most ambitious climate goal set out in the *Climate Change Act 2022* (Cth) (**Climate Change Act**).[8]

To align with the draft ASRS, proposed subsection 2A sets out when a scenario analysis must be carried out as part of disclosures that relate to the climate resilience of the entity's strategy and its business model. These requirements are referred to in s 296D(1)(c)(i) of the Treasury Bill and form part of the strategy disclosures in the draft ASRS. Proposed subsection 2B requires that at least two scenarios be used when scenario analysis is carried out, in accordance with the Climate Change Act.

Subsection 295D(2B) prescribes that these two temperature scenarios must be:

(i) the increase in the global average temperature well exceeds the increase mentioned in subparagraph 3(a)(i) of the Climate Change Act 2022 (being 2°C above pre-industrial levels); and

(ii) the increase in the global average temperature is limited to the increase mentioned in subparagraph 3(a)(ii) of that Act (being 1.5°C above pre-industrial levels).

For the purpose of the higher warming scenario prescribed by subsection 296D(2B)(i), the Supplementary Explanatory Memorandum notes that an increase of 2.5°C or higher would be considered to 'well exceed' 2°C.

The Opposition, Australian Greens and Independent Senator Pocock also circulated proposed amendments to the Treasury Bill in the Senate. These amendments sought to remove scope 3 emissions and Group 3 reporting entities, reduce the scope and timeframe of the limited liability scheme, and remove transition plans as a protected statement, respectively. Only the amendment sought by the Australian Government, in respect of scenario analysis, was passed by the Senate. As climate statements will need to be prepared in accordance with the ASRS (see s 296A and 296D of the Bill), which already prescribes the requirement of scenario analysis addressing temperature targets, this amendment does not substantively change the scope of the disclosure requirements under the Bill. However, the introduction of the higher warming target (of well above 2°C) is a more stringent disclosure requirement than proposed under the draft ASRS.

On 22 August, the Senate agreed to a third reading of the Treasury Bill, which meant that the Bill, as passed by the Senate, went back to the House of Representatives for consideration in respect of the minor amendments made. The House of Representatives passed the Treasury Bill, meaning the Treasury Bill to be presented for Royal Assent has only the minor amendment in respect of s 296D.

Preparing for the forthcoming disclosure requirements

The Treasury Bill is expected to receive Royal Assent in the near future, with the accompanying ASRS and AUASB standards to be finalised shortly thereafter, and the regime to come into effect from 1 January 2025. This means that the first group of in-scope entities (Group 1 entities) will be required to report from 1 January 2025 or 1 July 2025, depending on whether they report on a calendar or financial year basis. In either case, entities will need to be collecting all GHG and energy data from the beginning of their first reporting period, from as early as 2025, to incorporate into their first sustainability report.

Entities should confirm whether, and if so, when, they will be captured by the disclosure requirements and commence preparations for data collection (particularly in relation to scope 1 and 2 GHG emissions) and developing their governance, strategy, risk management, metrics and targets for identifying and acting on climate-related financial risks and opportunities. For those entities that do not anticipate being in-scope for this regime, consideration should still be had to the status and potential improvement of their data collection and governance strategies. All entities can take advantage of the guidance and best practices that will accompany this disclosure regime, such as the forthcoming regulatory guidance from ASIC[9], to improve their data reporting and governance strategies in respect of climate-related financial risks and opportunities.

Decarbonisation Developments

Capacity Investment Scheme: Australia's largest renewable energy tender

On 31 May 2024, the Australian Government opened the largest ever single tender for renewable energy in Australia, supporting private investment in 6GW of new renewable energy generation across the National Electricity Market (**NEM**).[10] Renewable projects can now bid to be a part of the Reliable Renewables Plan (**RRP**) which will deliver 32GW of new energy generation and storage into the NEM with the Capacity Investment Scheme.

The first tender round closed on 1 July, with more than 80 project bids received with a combined capacity more than four times the 6GW target.[11] The bids are now being merit assessed in accordance with the Tender Guidelines, taking into account a broad range of factors including value for money, timing for delivery, First Nations commitments and local community benefits, with meritorious projects progressing to Stage B and successful projects being announced at the end of the year.[12] Tenders will continue to be rolled out every six months in the NEM, and annually in the Western Australian Wholesale Electricity Market, out to 2027. The second tender round recently opened on 27 August[13], and the first round of tenders for Western Australia, targeting 500MW of storage, will commence in mid-2024.

To enable the implementation of the RRP, there have been ongoing negotiations between the Commonwealth and States and Territories, aimed at improving reliability and fast-tracking the deployment of renewable energy projects. As of the end of May, 2.2GW has been allocated exhaustively for New South Wales, 0.3GW for South Australia, 1.4GW for Victoria and 0.3GW for Tasmania. The remaining 1.8GW will be allocated across the NEM, including Queensland, to the most meritorious projects.

Developments in offshore wind: feasibility licences granted

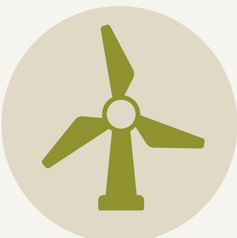
The offshore wind industry is well established internationally. Recently, the Australian Government has signalled its commitment to develop offshore wind as a renewable energy industry in Australia as well. In August 2022, the Australian Government announced the identification of six priority areas in Australia for offshore wind: Gippsland and Southern Ocean regions off Victoria, the Hunter and Illawarra regions off New South Wales, the Bass Strait off Tasmania and the Indian Ocean off Bunbury, Western Australia.[14]

On 1 May 2024, the Australian Government granted the first feasibility licences to six potential offshore wind projects in the Gippsland region off Victoria.[15] The six projects are: High Sea Wind Pty Ltd, Gippsland Skies Pty Ltd, Blue Mackerel North Pty Ltd, Kut-Wut Brataualung Pty Ltd, Ørsted Offshore Australia 1 Pty Ltd (Gippsland 01) and Star of the South Wind Farm Pty Ltd. These projects can now commence the detailed assessment work to determine their feasibility, including environmental studies and management plans.

The Government is also processing another six licences for projects in the Gippsland region, which have progressed to First Nations consultation: Iberdrola Australia OW 2 Pty Ltd (Aurora Green), Greater Gippsland 2 OWP Project Pty Ltd (Gippsland Dawn), Navigator North Project Pty Ltd, Ørsted Offshore Australia 1 Pty Ltd (Gippsland 02), Kent Offshore Wind Pty Ltd and Great Eastern Offshore Wind Farm Project Co Pty Ltd. These 12 projects are anticipated to collectively generate 25GW of electricity. They will create approximately 15,000 jobs during construction and 7,500 in maintenance.[16]

We anticipate the next round of feasibility licences will be granted to potential projects in the Hunter region, where a preliminary decision has been made for feasibility licence applications received in late 2023.The Southern Ocean and Illawara regions were recently open for feasibility licence applications until 2 July 2024 and 15 August 2024, respectively. The Bass Strait and Indian Ocean regions are still subject to ministerial consideration of the final area. The Bass Strait and Indian Ocean regions are still subject to ministerial consideration of the final area.

The Gippsland projects, and any further projects that receive feasibility licences, will be important for achieving Australia's net zero targets, and particularly key to meeting Victoria's renewable energy target of 2GW of offshore wind energy generation by 2032. In March 2024, Victoria became the first and only Australian jurisdiction to declare offshore wind targets.[17]



6 wind projects

On 1 May 2024, the Australian Government granted the first feasibility licences to six potential offshore wind projects in the Gippsland region off Victoria

State-based GHG emissions reduction targets

The first half of 2024 has seen significant development in GHG emissions reductions and net zero targets at a State level. At a Commonwealth level, Australia has committed to reduce GHG emissions by 43% below 2005 levels by 2030 and achieve net zero emissions by 2050.[18] All but one Australian State or Territory has legislated, or is in the process of legislating, a net zero emissions target at least as ambitious as the Commonwealth 2050 net zero target. There has also been a recent surge in ambitious renewable energy targets to facilitate the net zero transition.

In February 2024, the South Australian (**SA**) Government introduced the *Climate Change Emissions Reduction (Miscellaneous) Amendment Bill 2024* (SA) proposing a new principal target of net zero emissions by 2050 as well as reducing emissions by 50% below 2005 levels by 2030 and achieving net renewable electricity generation in the State by the end of 2030.[19] The proposed amendments have recently been subject to a consultation period and have not yet been enacted. Nonetheless, on 18 April 2024, the SA Government announced that the State has already exceeded the proposed 2030 commitment and has achieved a 57% reduction in the State's net GHG emissions from 2005 levels as of 2024.[20]

In April 2024, Queensland enacted targets to reduce GHG emissions by 30% below 2005 levels by 2030, 75% below 2005 levels by 2035 and achieve net zero emissions by 2050.[21] The Minister for Energy and Clean Economy Jobs has also been directed to determine an interim 2040 and 2045 target by the end of 2030 and 2035 respectively.[22] As of 20 April 2024, Queensland has already achieved its 2030 target.[23] To facilitate the transition to net zero, Queensland has also committed to renewable targets of 50% of all electricity generated in Queensland to be generated from renewable energy sources by 2030, 70% by 2032 and 80% by 2035.[24]

In May 2023, Victoria committed to reducing GHG emissions by 75-80% below 2005 levels by 2035 and net zero emissions by 2045, as the interim targets to be set under the *Climate Change Act 2017* (Vic).[25] In March 2024, Victoria enacted new targets to achieve 95% of electricity generated in Victoria to be generated by renewable energy sources by 2035 and strengthened the interim 2030 target from 50% to 65% renewable energy.[26] Victoria has already achieved its interim renewable energy target of 25% by 2020 and is on track to achieve its target of 40% by 2025.[27]

On 5 July 2024, Western Australia (**WA**) announced its commitment to reducing GHG emissions by 80% below 2020 levels by 2030.[28] This interim target follows the introduction of a *Climate Change Bill 2023* in November 2023, proposing a target of net zero emissions by 2050 and directing the Minister to set interim emissions reduction targets from 2035 onwards.[29] However, that Bill is still before the Legislative Assembly, and has not progressed since being introduced and read for a first time on 30 November 2023.[30]

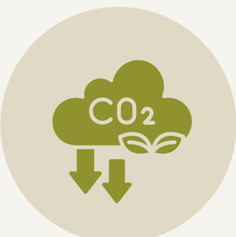
There have been no recent developments in Tasmania, the Australian Capital Territory or New South Wales, which have committed to achieving net zero emissions by 2030, 2045 and 2050 respectively.[31] Tasmania was the first Australian jurisdiction to achieve net zero emissions in 2013 and has maintained this status since.[32] There have also been no recent developments in the Northern Territory, which has announced its commitment to achieving net zero emissions by 2050 in a Climate Change Response published in July 2020, however, to date, remains the only Australian jurisdiction to have not taken steps to legislate a net zero or any interim target.[33]

State-based guidance on GHG emissions assessments

GHG emissions guidelines for large projects have recently come into effect in Queensland and been introduced in draft form for consultation in New South Wales (**NSW**). These guidelines are designed to assist large emitters with managing and reducing GHG emissions and facilitate more effective assessments of large emitting projects.

New South Wales Requirements and Guidance

On 20 May 2024, NSW Environmental Protection Authority (**EPA**) released for consultation draft Climate Change Assessment Requirements (**Requirements**) and an associated draft Greenhouse Gas Assessment Guide for Large Emitters (**Guide**).[34] The draft Requirements and Guide propose to introduce requirements for proponents to assess anticipated GHG emissions and mitigation opportunities, in both the short term and long term, for a proposed development. The Requirements and Guide are proposed to apply to all new projects or significant modifications that are likely to exceed 25,0000 tonnes of scope 1 and 2 emissions. This will include coal mines, landfills, chemical manufacture and waste management facilities.



43%

At a Commonwealth level, Australia has committed to reduce GHG emissions by 43% below 2005 levels by 2030 and achieve net zero emissions by 2050

These in-scope project proponents will be required to prepare GHG Assessment and Mitigation Plans, as part of the environmental impact assessment process to obtain planning approval and a Climate Change Mitigation and Adaptation Plan, which will be addressed separately in forthcoming guidance. Projects likely to exceed 100,000 tonnes of scope 1 and 2 emissions will be required to have their mitigation assessments verified by an independent expert review.

The NSW Requirements and Guide are designed to increase transparency and, where possible, increase mitigation, of GHG gas emissions for new high emitting development proposals. The consultation period closed on 1 July 2024. The NSW EPA is currently reviewing feedback received, after which it will release a report outlining the feedback and its considerations of that feedback. This report will likely be released in late 2024.

Queensland GHG emissions guidelines

On 15 May 2024, the Queensland Department of Environment, Science and Innovation released the Greenhouse Gas Emissions Guideline (**Guideline**) to clarify requirements under the *Environmental Protection Act 1994* (**EP Act**) and provide guidance to meet these requirements.[35] Unlike the proposed NSW Requirements and Guide, the Queensland Guidance does not include any new requirements or regulatory provisions.

The Guideline sets out the minimum expectations for GHG emissions information to be provided with applications for new environmental authorities (**EAs**) and applications to modify existing EAs, in accordance with the requirements of the EP Act. For example, the Guideline states that applications for new or modifying EAs should include an inventory identifying the anticipated GHG emissions and breaking down the estimated source and stage of the project, estimate of annual scope 1 and 2 emissions over the life of the project, and an estimate of annual scope 3 emissions and total scope 3 emissions over the life of the project.

A new Net Zero Economy Authority

On 9 September 2024, the Australian Parliament passed the Net Zero Economy Authority (Transitional Provisions) Bill 2024 (**NZEA Bill**), establishing the Net Zero Economy Authority (**NZEA**) to promote economic transformation as Australia transitions to a net zero emissions economy.

The NZEA will support the achievement of Australia's greenhouse gas emissions reduction targets, by facilitating public and private sector participation and investment in greenhouse gas emissions reduction and net zero transformation initiatives, and ensuring Australia's regions and workers are supported through, and benefit from, the associated economic transformation. The NZEA will play a significant role in coordinating net zero efforts across government and key stakeholders and building community understanding, confidence and engagement with the net zero transformation.

The NZEA Bill will be presented to the Governor-General for Royal Assent. The provisions will then commence on a day to be fixed, or 6 months after the date of Royal Assent.

Greenwashing Developments

Senate inquiry into greenwashing

On 22 April and 24 May 2024, public hearings were held in Canberra pursuant to the Senate's referral of an Inquiry into Greenwashing in March 2023 (**Inquiry**).[36] The scope of the Inquiry is on claims made by companies, the impact of those claims on consumers, regulatory examples, advertising standards, and legislative options to protect consumers.[37] Written submissions were also received prior to the hearings.

Submissions to the Inquiry have highlighted the urgent need for clarity and consistency in greenwashing definitions and regulations. Witnesses from Treasury and ASIC have discussed the development of sustainable finance agendas and the commencement of civil penalty proceedings for greenwashing, respectively.[38] To this end, the Australian Competition and Consumer Commission (**ACCC**) noted that it released guidance on greenwashing in December 2023 and is planning to release further guidance on emissions claims later this year.[39]

The Inquiry has also shed light on the Climate Active program, administered by the Department of Climate Change, Energy, the Environment and Water (**DCCEEW**), which has faced criticism for potentially abetting corporate greenwashing. About 700 companies claim to be Climate Active certified, including major Australian corporations. However, an ACCC witness confirmed that the Climate Active trademark has not been assessed by the ACCC.[40]

The Australia Institute, which has been instrumental in bringing national attention to greenwashing, also played a prominent role in the submissions to the Inquiry, identifying issues with the Climate Active Scheme and calling for a more comprehensive assessment of businesses' climate actions.[41]

The Senate Inquiry has received extensive submissions, with a report scheduled to be released on 20 November 2024. The discussions the Inquiry has sparked will have significant implications for Australian companies, scrutinising the veracity of environmental claims made in the corporate sector. The report and outcomes of the Inquiry may influence future legislation and industry guidance. Australian companies should follow the Inquiry and any subsequent developments with diligence, to ensure their environmental claims are substantiated and transparent, and in alignment with industry standards.

Greenwashing regulatory enforcement crack down

The first half of 2024 has seen significant momentum in enforcement action on greenwashing in Australia. ASIC has had its first two successful greenwashing civil penalty actions and the ACCC has filed its first action in the Federal Court of Australia (**FCA**).

ASIC's first successful greenwashing actions

On 28 March 2024, the FCA found Vanguard Investments Australia Ltd (**Vanguard**) guilty of making false or misleading representations and engaging in conduct likely to mislead the public regarding its Ethically Conscious Global Aggregate Bond Index Fund, in violation of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**). This case marks ASIC's first successful greenwashing civil penalty action. See our Gilbert + Tobin Knowledge Insight for further detail on ASIC's claims against Vanguard and the FCA's findings. The FCA's judgement is pending on the pecuniary penalties and adverse publicity orders following a penalty hearing on 1 August 2024.

On 5 June 2024, the FCA found that LGSS Pty Ltd, as the trustee of the superannuation fund now known as Active Super (**Active Super**), made false or misleading representations and engaged in conduct that was liable to mislead the public about its ESG credentials in breach of the ASIC Act. See our Gilbert + Tobin Knowledge Insight for further detail on ASIC's claims against Active Super and the FCA's findings. The FCA's decision on penalties and adverse publicity orders is pending, with a further hearing to determine final orders listed for 17 December 2024.

On 2 August 2024, the FCA found that Mercer Superannuation (Australia) Limited (**Mercer**) breached the ASIC Act by engaging in conduct that was liable to mislead the public and made false or misleading representations. Mercer was ordered to pay a pecuniary penalty of $11.3 million and publish an adverse publicity notice on the sustainable investments page of its website.

The ACCC's first greenwashing proceedings

On 18 April 2024, the ACCC commenced its first greenwashing regulatory proceedings in the FCA 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.[42] The ACCC seeks orders for declarations, penalties, injunctions, corrective notices, the implementation of a compliance program and costs. See our Gilbert + Tobin Knowledge Insight for further detail on the ACCC's claims. The matter has been listed for its first return date before the Federal Court of Australia in October 2024.

What this means for businesses

These cases highlight ASIC and the ACCC's regulatory enforcement focus on greenwashing and serve as a cautionary tale for organisations to have strategies in place to avoid or reduce the risk of greenwashing. The FCA's pending decisions will provide further clarity on the standards expected from companies when making environmental claims and the consequences for breaching those standards. Companies should ensure that their environmental claims and public statements, including those on social media, are accurate and substantiated to avoid the risk of greenwashing. This includes having robust policies and procedures in place to align investment strategies and objectives with public claims, and that advertised ESG-related claims or exclusionary screens are implemented into products and services appropriately.

ACCC Draft Guidance on competition released

On 8 July 2024, the ACCC published a draft guide on sustainability collaborations and Australian competition law (**Draft Guide**) for consultation.[43] The Draft Guide focuses on competition law risks in the context of 'sustainability collaborations', which includes any discussions, agreements or other practices amongst businesses aimed at preventing, reducing or mitigating the adverse impact that economic activities have on the environment.

The Draft Guide provides guidance for businesses on the competition law risks that may arise in relation to sustainability collaborations and how 'authorisation' exemptions may be available for sustainability collaborations in the public interest. The Draft Guide also includes practical tips for assessing whether conduct may be considered sustainability collaboration, whether that conduct may be at risk of breaching competition law and how to apply for 'authorisation' exemptions from competition law.

For further information on the ACCC Draft Guide, including detail on how sustainability collaboration may be considered cartel or otherwise anti-competitive conduct, and how businesses can apply for exemption 'authorisations' from competition law provisions, see our Gilbert + Tobin Knowledge Insight. The ACCC recently closed the consultation period for feedback from businesses, peak bodies and other stakeholders on the Draft Guide on 26 July 2024. The ACCC is now considering submissions and anticipates publishing a finalised guide in late 2024.

Crackdown on Greenwashing in the Aviation Industry

The crackdown on greenwashing in Australia is part of a broader global regulatory trend. Recently, regulators worldwide have increased scrutiny on the aviation industry, with the first greenwashing judgement against the aviation industry delivered in the Netherlands in March.

On 20 March 2024, the District Court of Amsterdam delivered a highly anticipated judgement in respect of greenwashing claims against KLM Royal Dutch Airlines.[44] The District Court found that 15 of the 19 statements made by the airline in relation to three marketing campaigns and/or products were misleading and unlawful, in violation of the Dutch Unfair Commercial Practices Act (which is the Dutch implementation act of the EU Unfair Commercial Practices Directive 2005).

This judgement follows the adoption of a new EU Directive in February, on empowering consumers for the green transition through better protection against unfair practices and through better information.[45] The Directive amends the EU Unfair Commercial Practices Directive to set stricter requirements for the use of 'green claims', including generic environmental claims, sustainability labels, future environmental performance and claims based on greenhouse gas emissions offset, and the standard of explanation required to accompany such claims. Member States will be required to transpose the Directive into domestic legislation from 27 September 2026. The European Commission has further cracked down on potential greenwashing in the aviation industry, issuing, on 30 April 2024, letters to 20 airlines identifying several types of potentially misleading green claims and inviting them to bring their practices in line with EU consumer law within 30 days.[46]

There has also been increasing scrutiny on greenwashing claims in the aviation industry in Australia. In September 2023, the Australian Government released an Aviation Green Paper for consultation,[47] to inform the Government's forthcoming Aviation White Paper, expected to be imminently published in mid-2024.[48] The White Paper will set the long-term policies to guide the transition to net zero in the aviation sector.[49] In its submission on the Aviation Green Paper, the ACCC called for robust frameworks to provide certainty on investment decisions to reduce emissions in the aviation sector and provide clarity to the aviation industry on its responsibilities to support the net zero transition.[50] The ACCC highlighted that airlines have been found to have misled consumers over their sustainability claims and that this undermines decarbonisation efforts.

Following this landmark decision against KLM Royal Dutch Airlines, and increasing scrutiny globally on greenwashing claims in the aviation industry, Australian airlines should be particularly conscious of how they make environmental claims; and in particular, how they present their net zero goals and market offset options during flight bookings.

Sustainable Finance Developments

Australian Government Green Bonds Program

To further fund Australia's commitment to achieve net zero by 2050, the Australian Government has committed to using a Green Bond Program. In December 2023, the Australian Office of Financial Management (**OAFM**) released the Australian Government Green Bond Framework (**Bond Framework**), setting out the Government's key climate change and environmental priorities and outlining how green bonds will be used to finance Eligible Green Expenditures. The Bond Framework is aligned to the International Capital Market Association Green Bond Principles 2021.

On 4 June 2024, the OAFM, on behalf of the Australian Government, issued the first Green Treasury Bonds (**Green Bonds**), set to mature in 2034.[51] The Green Bonds issue, developed in accordance with the Bond Framework, was heavily over-subscribed with more than $22 billion in bids from 105 investor institutions across Australia, Asia, Europe and North America.

The Commonwealth Bank of Australia, Deutsche Bank, National Australia Bank, UBS AG and Westpac Banking Corporation have been appointed as Joint Lead Managers for the issue.[52] The money raised from the Green Bonds will go towards projects like green hydrogen hubs, community batteries and clean transport, as well as programs to conserve biodiversity, in accordance with the Bond Framework. The Green Bonds give investors from around the world the opportunity to back government supported projects in Australia which are crucial to climate change mitigation and adaptation and improved environmental outcomes.

Australian Government releases Sustainable Finance Roadmap

On 19 June 2024, the Australian Government released the Sustainable Finance Roadmap (**Roadmap**) setting out its vision for the implementation of key sustainable finance reforms and related measures.[53] The Roadmap is designed to mobilise the significant private capital required to achieve net zero, modernise Australia's financial markets and maximise the economic opportunities associated with the energy transition, climate and sustainability goals.

The Roadmap contains 10 priorities for sustainable finance measures across three focus areas: improving transparency on climate and sustainability, financial system capabilities, and Australian Government leadership and engagement. The first priority is implementing climate-related financial disclosures. The release of the Roadmap marks a decisive step towards positioning Australia as an international leader in sustainable finance. It highlights the significant forthcoming developments which businesses must stay abreast of, including the climate-related financial disclosure regime and final sustainable finance taxonomy, both of which are anticipated to be finalised by the end of 2024.

$22b

The Green Bonds issue … was heavily over-subscribed with more than $22 billion in bids from 105 investor institutions across Australia, Asia, Europe and North America

Carbon market developments

Evolving guidelines for high integrity use of carbon credits

The first half of 2024 has featured significant guideline and framework announcements from voluntary carbon market leaders in relation to high integrity use of carbon credits.

In April, the International Emissions Trading Agency (**IETA**) issued its Voluntary Carbon Market Guidelines for High Integrity Use of Carbon Credits (**IETA Guidelines**),[54] outlining six core guidelines for how companies can use carbon credits as a high-integrity part of their decarbonisation strategy. The Science Based Targets Initiative (**SBTi**) also announced forthcoming guidance on how environmental attribute certificates can be appropriately used for scope 3 emissions abatement purposes.[55] This followed the release of two SBTi guidance reports in February on the design and implementation of beyond value chain mitigation.[56]

In May, the Biden-Harris Administration released its Statement of Principles for High-Integrity Voluntary Carbon Markets (**VCM Principles**), providing non-binding but robust guidance to ensure that carbon credits meet atmospheric integrity standards and represent effective decarbonisation and permanence.[57]
In June, the Integrity Council for the Voluntary Carbon Market (**ICVCM**) announced its endorsement of the first Core Carbon Principles (**CCP**) compliant carbon-crediting methodologies, developed by ACR Carbon, Climate Action Reserve, Verra and Gold Standard.[58] The ICVCM is currently assessing the next round of carbon-crediting programs and methodologies for their CCP alignment.[59]

For Australian companies, these developments represent immense opportunity for the use of carbon credits as a decarbonisation tool, including for Scope 3 abatement purposes.
In maximising these opportunities, businesses should ensure that their carbon offsetting activities align with international guidance and the CCPs. The announcement of the VCM Principles and CCP-aligned carbon credit methodologies signifies a shift towards more stringent and transparent climate-related practices, methodologies and reporting requirements, which Australian businesses should remain abreast of and be prepared for any increased requirements for their environmental claims and carbon offsetting activities. The VCM Principles also suggest a potential for future regulation, which could impact Australian companies' operations and reporting requirements.

FOR AUSTRALIAN COMPANIES, THESE DEVELOPMENTS REPRESENT IMMENSE OPPORTUNITY FOR THE USE OF CARBON CREDITS AS A DECARBONISATION TOOL, INCLUDING FOR SCOPE 3 ABATEMENT PURPOSES

/ **FEATURE**

Finding your reporting suite sweet spot

Corporate reporting in Australia is undergoing a major transformation due to mandatory climate reporting. These changes will impact the Annual Reports of all entities reporting under Chapter 2M of the Corporations Act 2001.

The draft Australian Sustainability Reporting Standards integrate climate-related financial information into your Annual Report and require its separation from non-climate sustainability reporting. Here are our expert tips for managing your sustainability content.

/ WORDS BY

Susan Dyster
Senior Strategy Manager

1. Know your audiences

First, review who your audiences are, what they want to know, and how they like to access reporting information.

Typical audiences include employees, retail and institutional investors, ESG analysts, rating agencies, customers, suppliers and community members. Each audience has different reporting needs.

Retail shareholders want clear updates on your commitments, progress, key metrics, and any potential dividends. Institutional investors, such as super funds, are focused on understanding how sustainability is creating value for the long term. Analysts and rating agencies skim narratives for key data points to rate your sustainability performance against industry peers.

Employees (current and prospective) also read your reports, often more than other audiences. Despite knowing the business well, current employees value seeing your environmental, social and governance initiatives in one place. It gives many a sense they are contributing to outcomes aligned with their values and greater purpose in their work. The report also provides a reservoir of sustainability information to draw from in their own strategy and engagement work.

VIDEOS AND ANIMATIONS, WEBPAGES AND INTERACTIVE ONLINE INFOGRAPHICS CAN ALSO EFFECTIVELY CONNECT AND SHOWCASE KEY INFORMATION FOR STAKEHOLDERS

2. Step back and ask why

Changing legislative requirements provide a chance for you to reassess why your reporting suite is the way it is.

What decisions drove the separation of a TCFD-aligned climate report from your Annual Report, for example? How have your audiences' needs and expectations changed since then?

Report preparers should ask:

- Does your current content address material sustainability priorities and how you are delivering on commitments?
- Is your reporting available in a format that best suits your audiences' needs?

3. Reshaping your reporting suite

Taking time to consider how your audiences' needs may have changed since you last reviewed your reporting suite can help determine your path forward in this new reporting landscape.

With climate-related financial information in the Annual Report, there are several communication approaches that can capture the balance of your sustainability reporting to engage your audiences and meet their needs.

Website

The company website is an effective yet often underutilised tool for communicating sustainability information to your audiences.

A blog or news section within the sustainability section (or within your company-wide newsroom or media centre) creates a space to communicate sustainability initiatives as they happen; rather than bundled together at year-end. These items can be repurposed for social media content and/or collated into a newsletter for employees and others.

This approach also provides you with a ready-made set of case studies and initiatives to select and refine for your report. With the full items available on your website, you can include a simple introduction to the initiative with a link to the website content.

Data packs

A separate Excel data pack is a valued resource for audiences seeking data points to analyse your performance compared to peers. Investors, ESG analysts and ratings agencies, for example, may dive into this detail before searching for their priority keywords in your report.

Data books typically consolidate key data points across environmental, social and governance topics to provide the detailed breakdowns required by reporting standards. Including data from at least two prior years will help users understand your organisation's performance and progress over time. Include cross-references between your reporting, the data pack, and relevant assurance information so audiences know further detail is available.

Summary or Highlights Reports

As reporting requirements become more detailed, some organisations are creating a Summary or Highlights Report as a companion to the Sustainability or Annual Report. Typically, these are between eight and 20 pages long and capture strategic and performance information by repurposing content from the full Sustainability Report.

These concise overview documents can provide an accessible introduction to your reporting for audiences with varying levels of interest and expertise. If you prepare a Summary Report, include cross-references and links to the full report so audiences know where to go for more information.

Note that a Summary Report doesn't have to be a 'report'. Videos and animations, webpages and interactive online infographics can also effectively connect and showcase key information for stakeholders.

Performance dashboard

An alternative to the summary report, a dashboard captures your progress against key sustainability targets in a data-focused visual format. It can be a simple static visual on your website, or interactive, if you use tools such as Tableau or Power BI.

As always, ensure you include cross-references between the dashboard, your report and any relevant assurance information so audiences know that further detail is available.

Your reporting roadmap

The best combination of reporting and communication approaches for your organisation will depend on your audiences, your organisation's reporting maturity, and your appetite for change. We encourage you to think beyond compliance and to reflect on how you can refresh your approach to find your reporting suite sweet spot.

/ IN DEPTH

EUROPEAN UNION CORPORATE SUSTAINABILITY: DUE DILIGENCE AND DOUBLE MATERIALITY WHAT THIS MEANS FOR AUSTRALIA

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The European Union has traditionally paved the way in respect of ESG ambitions – not least in regard to sustainability reporting. On 5 January 2023, the EU adopted the European Union Corporate Sustainability Reporting Directive (CSRD), introducing the first mandatory sustainability reporting regime, applying to all EU and some non-EU companies.[60] The disclosure requirements under the CSRD applied to the first round of in-scope entities, being an estimated 50,000 companies, from January 2024 – with reports to be published in 2025.

Recent developments have continued to advance sustainability reporting in the EU and globally. Notably, in March 2024, the Global Reporting Initiative (**GRI**) released guidance on how to interpret the CSRD and in May, the European Union adopted a new Corporate Sustainability Due Diligence Directive. Below, we unpack these developments and what they mean for Australian businesses.

GRI Guidance on Double Materiality, Due Diligence and CSRD

The GRI is an independent, international organisation that develops standards and guidelines to advance the practice of sustainability reporting and enable organisations and their stakeholders to take action that creates measurable economic, environmental and social benefits.[61]

On 18 March 2024, the GRI published a series of public briefing documents on key topics related to transparency and reporting.[62] The documents address three core topics: double materiality, due diligence, and the EU's Corporate Sustainability Reporting Directives (**CSRD**) and its implications for companies outside of the EU.

Double materiality

Double materiality relates to the interconnectedness of a company's impacts on society and the environment with its financial performance, and that reporting should be one holistic process. There are two key aspects of double materiality. The first is reporting on impacts a company has on society and the environment and its contributions towards sustainable development. The second is reporting on sustainability-related financial disclosures addressing the financial implications of sustainability issues.[63]

The integration of double materiality into the CSRD means that national policy makers in the EU are required to develop policies that are aligned with double materiality. GRI Standards prepare companies for double materiality due to the sequencing effect whereby the reported impacts serve as the basis for companies to determine which of these impacts, at what point in time, could affect the financial health and value of the company.

Due diligence

Due diligence is the process through which an organisation identifies and assesses, prevents, mitigates and accounts for how it addresses its actual and potential adverse impacts.[64] Initially, due diligence policies were focused on assessing negative impacts on human rights. In 2011, the United Nations Human Rights Council adopted the UN Guiding Principles on Business and Human Rights, which state that all companies have a responsibility to conduct human rights due diligence. However, evolving social expectations are requiring companies to take responsibility for their environmental, sustainability and climate impacts as well. Policy makers globally are increasingly incorporating due diligence into legislative requirements, requiring businesses, regulators and legislators to consider how to embed and operationalise due diligence expectations. Reporting in alignment with the GRI Standards supports all the steps of due diligence, including communicating what the organisation's impacts are, who their stakeholders are and how they are engaged, and how impacts are identified and managed.

EVOLVING SOCIAL EXPECTATIONS ARE REQUIRING COMPANIES TO TAKE RESPONSIBILITY FOR THEIR ENVIRONMENTAL, SUSTAINABILITY AND CLIMATE IMPACTS

CSRD

As European businesses ready themselves for mandatory reporting under the CSRD, non-EU businesses must also be considering how the CSRD extends to international companies. From 2024, the CSRD will also apply to non-EU companies with securities listed on an EU regulated market and from 2028, all non-EU companies that generate a net turnover of over EUR 150 million in the EU. The GRI Guidance on the CSRD details where multinational companies may come within the scope of the CSRD and how the reporting requirements will impact them.[65] The GRI Standards are closely aligned with the new European Sustainability Reporting Standards, which have been developed in collaboration with the CSRD.

Implications of the GRI Guidance

The GRI Guidance highlights the importance of achieving alignment and consistency between sustainability reporting policies set by different jurisdictions. This has been emphasised by GRI Chief Policy Officer, Peter Paul van de Wijs, who stated, "[as] the momentum builds towards more transparency around corporate behaviour, alongside demands for globally comparable data, GRI is seeking to address policymakers' questions on how mandatory sustainability reporting can help them tackle challenges in their jurisdictions."[66]

In light of this, on 28 May 2024 the GRI and IFRS Foundation announced an enhanced collaboration to develop full interoperability between the GRI and ISSB standards. Building on their 2022 Memorandum of Understanding, this partnership seeks to streamline sustainability reporting for companies, benefiting both investors and a broader range of stakeholders.[67]

Corporate Sustainability Due Diligence Directive adopted

On 24 May 2024, the European Parliament and Council formally adopted the new EU Corporate Sustainability Due Diligence Directive (**CSDDD**), which was published in the European Official Journal on 5 July 2024. The CSDDD came into force on 25 July 2024. The CSDDD introduces mandatory human rights and environmental due diligence requirements for large EU and non-EU companies. These requirements will be introduced in a staggered basis and require in-scope companies to implement measures to identify, prevent, mitigate and remediate adverse human rights and environmental impacts.

Which companies will be within scope

After a phased implementation, the CSDDD will apply to EU companies with more than 1,000 employees and a global net turnover above EUR 450 million and non-EU companies with a net turnover within in the EU of more than EUR 450 million.

The CSDDD will only apply to those EU and non-EU companies which satisfy the relevant criteria above for two consecutive financial years. The CSDDD also extends to EU and non-EU 'ultimate parent companies', which, taken together as a group, meet the above thresholds.

"[AS] THE MOMENTUM BUILDS TOWARDS MORE TRANSPARENCY AROUND CORPORATE BEHAVIOUR, ALONGSIDE DEMANDS FOR GLOBALLY COMPARABLE DATA, GRI IS SEEKING TO ADDRESS POLICYMAKERS' QUESTIONS ON HOW MANDATORY SUSTAINABILITY REPORTING CAN HELP THEM TACKLE CHALLENGES IN THEIR JURISDICTIONS."

PETER PAUL VAN DE WIJS, GRI CHIEF POLICY OFFICER

THE ADOPTION OF THE CSDDD AND GRI GUIDANCE SIGNALS A SHIFT TOWARDS GLOBAL GOVERNMENT POLICY ON CORPORATE SUSTAINABILITY, WHICH MAY CATALYSE EFFORTS TOWARDS SIMILAR MEASURES IN AUSTRALIA

What will be the requirements for companies?

In-scope companies will be required to take various steps to identify, prevent, mitigate and remediate adverse human rights and environmental impacts, arising within their own operations, the operations of their subsidiaries and the operations of their business partners in their value chain. The core obligations imposed on in-scope companies are set out in Articles 5 to 16 and 22 to 23. These include, amongst others, adopting and integrating into all relevant policies a ‘risk-based’ approach to human rights and environmental due diligence (Arts 5 and 7), identifying and assessing potential adverse impacts (Arts 8 and 9), preventing, mitigating and providing remediation for any adverse impacts (Arts 10 to 12), and adopting and implementing a climate transition plan (Art 22).

Enforcement provisions and liability for non-compliance

The CSDDD will be enforced by the supervisory authorities of Member States, which will be empowered to carry out investigations where they consider there may be ‘substantiated concerns’. Member States will be able to require companies to provide information in connection with suspected non-compliance with the obligations set out in Articles 7 to 16. National supervisory authorities will also be required to ‘at least supervise’ the adoption, design (and updating) of companies’ transition plans. However, they are not required to supervise their implementation. Furthermore, there is no indication that such supervision will encompass the formal approval of such transition plans. However, if a supervisory authority identifies an act of (or omission amounting to) non-compliance, it may order the company to cease the relevant conduct or perform specific action to bring it to compliance, impose a proportionate pecuniary penalty, or adopt interim measures in case of imminent risk of severe and irreparable harm.

Member States will be able to hold companies liable for damages caused to natural or legal persons when the company intentionally or negligently fails to comply with the obligations under Articles 10 and 11 (being to prove and mitigate impact, or to end or minimise such impact). Article 29 of the CSDDD outlines the scope of a company’s liability for example, that where damage is found to have been caused jointly by the company, its subsidiary or a business partner, the company will be jointly and severally liable.

Implications of the new CSDDD and GRI Guidance

Now that the CSDDD has entered into force, Member States will have to start transposing the CSDDD obligations into national laws, which they must do by 26 July 2026. The CSDDD will be progressively phased in up to 26 July 2029 and is anticipated to apply to at least 6,000 large European Union companies and 1,000 large non-EU companies.

Australian companies should consider whether any part of their operations may be captured within the CSRD reporting and any steps that need to be taken to improve the company’s supply chain visibility, enhance stakeholder engagement or implement a climate transition plan in accordance with the CSDDD. Companies will benefit from aligning their response to the CSDDD with existing sustainability efforts; in particular, by ensuring to integrate it within their wider supply chain strategy, CSRD strategy and longer-term organisational sustainability transformation. Guidance in doing this can be obtained from the GRI Guidance papers and GRI Standards.

For all businesses, the adoption of the CSDDD and GRI Guidance signals a shift towards global government policy on corporate sustainability, which may catalyse efforts towards similar measures in Australia. It would be prudent for all Australian businesses to consider their ability to report in accordance with the CSDDD and GRI and equivalent Standards, and conduct a gap analysis to identify what further steps would be required to report compliantly, either voluntarily, or on a compliance basis if required in the future.

/ FEATURE

Realising Nature Positive

NATURE-RELATED DISCLOSURE DEVELOPMENTS

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WITH THE RATE OF REFORM AND IMPLEMENTATION OF NATURE POSITIVE AGENDAS LIKELY TO SCALE UP, BUSINESSES SHOULD BE LIVE TO SIGNIFICANT DEVELOPMENTS ON THE HORIZON

As intersections between climate change and the global biodiversity crisis emerge, disclosure requirements are expanding to encompass biodiversity risk.

Target 15 of the Kunming-Montreal Global Biodiversity Framework (**Biodiversity Plan**) (adopted in December 2022)[68] requires Parties to the Convention on Biological Diversity (**CBD**) to take measures to encourage and enable businesses (particularly large and transnational companies and financial institutions) to monitor, assess and transparently disclose their risks, dependencies and impacts on biodiversity. The target is directed toward reducing the negative impacts and increasing the positive impacts of business on biodiversity and to encourage more sustainable patterns of production.

The implementation of the Biodiversity Plan by governments will present new challenges for businesses seeking to manage their activities and keep pace with expanding corporate reporting and disclosure requirements. The focus on business and financial disclosure risk under the Biodiversity Plan is complemented by the following developments.

On a global scale, the Taskforce on Nature-related Financial Disclosures (**TNFD**), of which Australia is a key supporting and funding partner, has released reporting framework recommendations. While the TNFD is not itself binding, it is a framework for businesses to assess their impacts and dependencies on nature, and the associated risks and opportunities. Earlier this year, the TNFD published information on the 340 'early adopters' of its biodiversity and nature-related risk disclosure framework,[69] and since then many more companies have signalled their intention to adopt the framework.[70] This reflects increasing investor and stakeholder focus on nature-related risk.

In Australia, a new legal opinion, published by barrister Sebastian Hartford-Davis and lawyer Zoe Bush in late 2023 on nature-related risk and directors' duties, underscores the rapidly evolving expectations for companies to integrate biodiversity and nature risk assessment within their approaches to strategic planning and risk management.[71] The authors found that company directors and officers are already required to consider, manage and disclose upon their company's material financial risks pursuant to the *Corporations Act 2001* (Cth) (which may include nature-related risks). This has increased shareholder and public attention on nature-related risks as a distinct area of corporate governance, risk assessment and strategy.

There has also been increased Federal Government support for nature-related risk assessment and disclosure in Australia, including in the recently published Sustainable Finance Roadmap.[72] Similar to the incoming regulation of climate-related financial disclosures,[73] we expect the Federal Government to recommend and require nature-related disclosures in the coming years.

Key developments on the horizon

With the rate of reform and implementation of nature positive agendas likely to scale up, businesses should be live to significant developments on the horizon and company directors, executives, legal counsel and sustainability teams should begin engaging internally to ensure that their organisation's strategy and risk assessment framework sufficiently addresses nature-related risks, impacts, dependencies and exposures.

Below, we set out some of the key developments on the horizon to help inform businesses in incorporating nature-related risk assessment and disclosure frameworks into their core business systems.

Sustainable Finance Roadmap

In June 2024, the Federal Government published its Sustainable Finance Roadmap. The Sustainable Finance Roadmap all but commits the Federal Government to developing nature-related financial risk assessment and disclosure framework, recognising that firms, investors and financial regulators increasingly recognise the importance of responding to nature-related risks and opportunities.[74]

"IN ADDITION TO CLIMATE CHANGE, MOMENTUM IS GAINING PACE IN RELATION TO DISCLOSURE ON OTHER SUSTAINABILITY-RELATED TOPICS, INCLUDING NATURE AND BIODIVERSITY"

ASIC Chair Joe Longo

Key commitments in the Sustainable Finance Roadmap in respect of nature include:

— confirmation that $4.1 million from the 2024-25 Budget will be used over two years to develop tools and guidance to support the voluntary uptake of nature-related financial reporting by businesses and financial institutions in Australia;

— government monitoring of the work of the ISSB to develop reporting standards on biodiversity, ecosystems, and ecosystems services; and

— plans to build out sustainable finance taxonomy to cover additional sustainability objectives over time, such as biodiversity and ecosystem protection, sustainable water use and pollution prevention and control.[75]

Notably, the Sustainable Finance Roadmap also states that ASIC is monitoring regulatory developments in relation to nature-related risks and opportunities and disclosure of these under emerging frameworks.

The Federal Government has previously suggested that it supports ASIC to develop guidance on making nature-related financial disclosures in respect of financial products.[76]

In line with this momentum, in a keynote speech delivered on 22 April 2024 in relation to the proposed mandatory climate disclosure regime, ASIC Chair Joe Longo revealed that ASIC is monitoring global developments on nature-related disclosures and suggested that entities be prepared for these to be incorporated in Australia:[77]

"In addition to climate change, momentum is gaining pace in relation to disclosure on other sustainability-related topics, including nature and biodiversity. ASIC will continue to monitor these developments as they progress and encourages entities to ensure that any systems and processes they adopt for the purposes of climate-related financial disclosures be sufficiently agile to incorporate additional sustainability topics in future years."

ISSB standards for biodiversity, ecosystems and ecosystem services

A key global development needed to substantiate nature-related disclosure frameworks is already underway. On 23 April 2024, ISSB announced that it will commence work on two new projects to research disclosure about risks and opportunities associated with biodiversity, ecosystems and ecosystem services, and human capital. This comes after feedback following a period of consultation that demonstrated 'significant and growing need among investors for improved disclosures around biodiversity, ecosystems and ecosystems services as well as human capital, as a key source of value for companies'.[78]

These guidelines will inform the approaches of ASIC and the Federal Government to incorporating nature-related disclosures into domestic regulatory frameworks. Indeed, the Sustainable Finance Roadmap states that the Federal Government will monitor ISSB developments and consider its sustainability disclosure requirements in light of the global baseline developed by the ISSB.[79]

Shareholder activism

Another area that businesses and boardrooms should be live to is the rise of shareholder activism in respect of nature-related disclosures. Recent litigation reveals the growing legal risks that businesses face in a world where shareholders are increasingly interested in the 'green credentials' of their investments and whether the organisation has measures in place to manage climate and biodiversity risks, particularly risks that could affect shareholder value. One example is the claim brought against ANZ by a shareholder seeking disclosure of ANZ's internal risk management framework due to concerns that this framework does not appropriately deal with climate change and biodiversity risks.[80] The claim was discontinued after ANZ evolved its risk management framework for dealing with climate change and biodiversity risks, demonstrated by statements in its 2023 Annual Report.

In addition, commentators have reported that nature-related shareholder resolutions filed at North American AGMs have risen from one to 19, with seven of the 19 proposals urging companies to disclose in line with the recommendations of the TNFD framework across various sectors including pharmaceuticals, chemicals, automotives, retail and food companies.[81] These resolutions have been supported by institutional investors, signalling that nature-related shareholder activism is growing in prominence and will likely influence the broader investment ecosystem over time. We note that some of these resolutions led to commitments from the company to disclose ahead of the AGM. This is a trend we are expecting to reach Australia in future AGM seasons.

Events to look out for this year

This year will also see the Government finalise its updated Strategy for Nature and national nature targets ahead of the 16th meeting of the Conference of the Parties to the CBD in October (**COP16**).

In the lead-up to COP16, Australia is hosting the first Global Nature Positive Summit in Sydney from 8 to 10 October 2024 in Sydney. The Summit will promote scaling up international biodiversity finance and private sector participation, particularly for investments in developing countries.[82]

What does this mean for businesses?

Against this backdrop, businesses and their boards should review the TNFD reporting framework and monitor the release of the ISSB standards for biodiversity, ecosystems and ecosystem services. While the TNFD's recommendations will remain voluntary for Australian entities until codified under domestic law, they can be expected to trigger increasing scrutiny of nature-related risk management from investors and consumers.

With the above in mind, businesses should begin testing the LEAP approach recommended by the TNFD to identify, assess, manage and disclose nature-related issues. This involves locating their organisation's interface with nature, evaluating its dependencies and impacts on nature, assessing its nature-related risks and opportunities (which flow for the dependencies and impacts identified), and preparing to respond to and report on material nature-related risks.

Businesses and boards should also consider engaging with suppliers, borrowers, customers and other counterparties in respect of nature-related impacts (as well as on climate-related impacts to respond to climate disclosure reporting requirements). This can help to future-proof internal assessment and reporting frameworks by incorporating nature-related risks and information into the organisation's due diligence and procurement frameworks, in preparation for the continued focus on nature and biodiversity in the coming years.

$4.1 million

from the 2024-25 Budget will be used over two years to develop tools and guidance to support the voluntary uptake of nature-related financial reporting by businesses and financial institutions in Australia

/ FEATURE

Harnessing data for a nature-positive future

/ WORDS BY

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A 'nature-positive' future envisions a world in which human activities not only halt further ecological degradation but also restore and regenerate natural ecosystems. To achieve this, we must transform the way we interact with our environment, and data is emerging as a powerful tool in guiding these efforts.

Data plays a crucial role in the monitoring and understanding of the intricate web of ecosystems that support life on Earth. From monitoring ecosystems and predicting conservation outcomes, to guiding sustainable land use and engaging the public in conservation efforts, data-driven approaches are shaping the way we interact with the natural world.

For example, in late February this year the Great Barrier Reef Marine Authority reported a mass coral bleaching event, worryingly the fifth in eight years. The authority's monitoring of the reef is made possible by the satellite data it relies on to track the impact of global heating.

Data-driven farming, also known as precision agriculture, can help farmers reduce their environmental footprint and increase their productivity. Sensors, drones and data analytics are enabling them to improve soil health, conserve water, reduce their use of pesticides and fertilisers and optimise crop management. According to the World Economic Forum, precision-technology farming, and other nature-based solutions such as sustainable fisheries management, could yield USD10.1 trillion in business opportunities and create 395 million jobs by 2030.

'Citizen science' projects allow volunteers to collect data for environmental research. Through smartphones and online platforms, they can report wildlife sightings, weather events and more. Projects like eBird, Zooniverse and ClimateWatch, and in Australia, iNaturalistAU the Atlas of Living Australia and the Australian Museum's FrogID project, are providing valuable data for researchers, scientists and policymakers.

Data-driven policymaking will be key to a nature-positive future. Governments can use accurate data to design and allocate resources efficiently, implement conservation policies and track progress towards sustainability goals.

In July this year, the NSW Government released its NSW Plan for Nature, in response to Ken Henry AC's statutory reviews of the Biodiversity Conservation Act 2016 and the native vegetation provisions of the Local Land Services Act 2013. The review recommended a new nature-positive architecture and outlined this through six pillars. Pillar Five deals with data-informed decision making, in response to the review's finding that there were deficiencies in the biodiversity information presently available.

To this end, actions the Government has committed to include:

- Improving and upgrading biodiversity data gathering and management;
- Delivering decision-ready information and tools;
- Improving data quality accessibility, sharing and custodianship; and
- Establishing a natural capital accounting framework.

In Tasmania, the Government is creating a virtual model or digital twin of the State. A joint venture between 42-24, a subsidiary of the State-owned TasNetworks, and Enzen Australia, it will fly planes equipped with remote sensing technology that captures Light Detection and Ranging (LIDAR) data, which is a type of remote sensing that uses lasers to measure the density and type of vegetation, contours of the land and water flows.

The model will also include real-time data from sensors around the State, and government agencies and businesses using it will be able to plug in weather forecasts from the Bureau of Meteorology. This will allow them to predict which areas are likely to flood or face wind damage when extreme weather is forecast, and how bushfires will behave.

It will be the first time that a land mass the size of Tasmania will be modelled in this way.

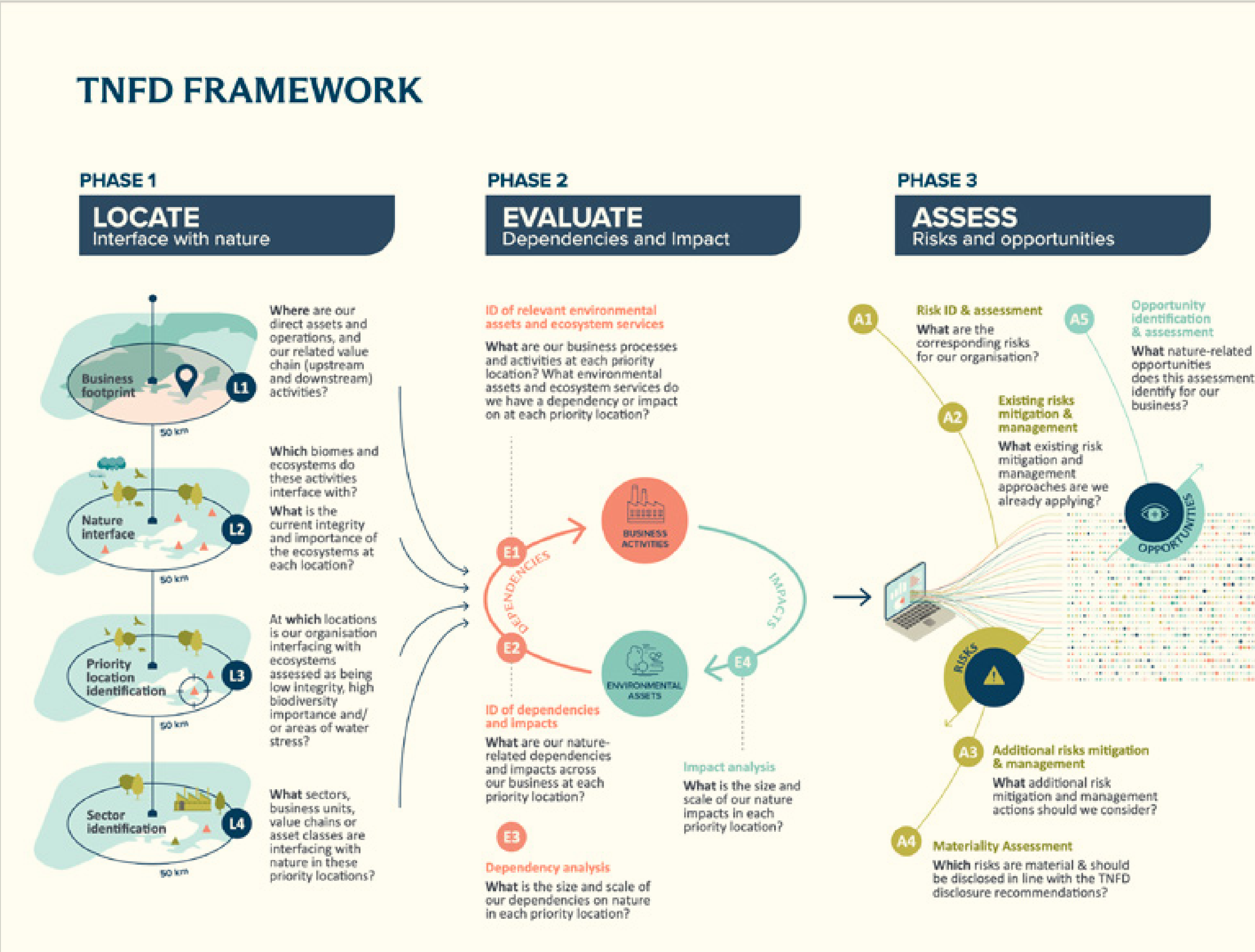
Nature-based solutions could yield

USD10.1 trillion

in business opportunities, and create

395 million jobs

by 2030



In the corporate world, the Greenhouse Gas (GHG) Protocol and in Australia, the National Greenhouse and Energy Reporting (NGER), are widely accepted and relatively straightforward frameworks that support companies' emissions reporting. However, no similar consensus exists for nature data, primarily because measuring biodiversity is inherently difficult, due to its complex links to business operations and the lack of agreement on trade-offs between biodiversity conservation and potential adverse social impacts.

Last September saw the launch of the Taskforce for Nature-related Financial Disclosure's (TNFD) final framework which identifies the varied biomes, assets and services that comprise nature.

This is intended to help decision makers assess not only how their organisations impact nature, but also how they interact with the benefits it provides.

To adopt and operationalise this new idea of nature, the TNFD's aptly named 'LEAP' framework allows organisations to identify and assess their nature-related risks and opportunities.

As more and more businesses acknowledge their impact and dependencies on nature, the need for precise and meaningful nature data becomes more apparent. In addition to new business and employment opportunities, nature-based solutions – the use of natural assets to tackle socio-environmental issues – may provide more than a third of the climate mitigation needed by 2030 to stabilise global warming below 2°C, according to a report by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services.

AS MORE AND MORE BUSINESSES ACKNOWLEDGE THEIR IMPACT AND DEPENDENCIES ON NATURE, THE NEED FOR PRECISE AND MEANINGFUL NATURE DATA BECOMES MORE APPARENT

There is no doubt frameworks like the TNFD will encourage substantial progress in the field of nature data. However, several pivotal questions remain unanswered. These include:

- **Measuring impacts along the entire value chain:** How can businesses effectively gauge biodiversity impacts across their entire value chain, encompassing investments, upstream activities and downstream impacts?
- **Allocating responsibility:** What constitutes the appropriate scope for impacts covered by corporate-level targets in intricate value chains, and how should responsibility be allocated among different actors?
- **Handling uncertainty:** What methods and metrics are best suited for quantifying and incorporating uncertainty when the impacts of businesses on biodiversity are assessed?
- **Defining baselines:** How should companies define the appropriate baseline against which targets are set and progress measured?
- **Cross-sector comparisons:** How can companies measure impacts and outcomes consistently across diverse sectors?
- **Data sharing and incentivisation:** How can companies be incentivised to share data and outcomes of their nature-positive strategies in ways that expedite effective conservation action?

By addressing these questions, and more broadly and effectively using nature data to transform the way we interact with natural ecosystems, policymakers, governments, businesses and conservationists can together construct a more sustainable future for our economy, society and planet.

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Nature-based solutions may provide more than one-third of the climate mitigation needed by 2030

/ IN DEPTH

Nature and biodiversity

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Stage 2 EPBC Act reforms

On 24 June 2024, the Commonwealth Government introduced three Bills to Parliament as part of the second stage of its 'Nature Positive Plan: better for the environment, better for business' (**Nature Positive Plan**), to amend the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) in response to the independent review of the EPBC Act.[83]

Federal Environment Protection Agency

The *Nature Positive (Environment Protection Australia) Bill 2024* proposes to establish a new statutory environmental regulator – Environment Protection Australia (**EPA**).[84] The EPA would be a non-corporate Commonwealth entity, led by a Chief Executive Officer as the accountable authority of the EPA. The EPA would administer and enforce an array of Federal-level environmental laws, assess and make decisions about development proposals and advise the Minister on whether instruments under the EPBC Act comply with national environmental standards.

The *Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024*[85] proposes to amend nine environmental laws to provide the CEO of the EPA with a range of powers and functions under those laws, and to amend the EPBC Act to confer compliance powers on the EPA, introduce protection order and audit powers, and provide for the Minister and Secretary to delegate powers to the CEO of the EPA.

Environment Information Australia

The *Nature Positive (Environment Information Australia) Bill 2024*[86] proposes to establish a new senior position of Environment Information Australia Head (**EIA Head**), as a statutory officer within DCCEEW. The EIA Head will have several functions, including to provide high quality and authoritative environmental data and information to the Minister and CEO of the EPA for national decision making.

The EIA Head will also lead efforts to establish a monitoring and reporting framework to assess whether 'nature-positive' outcomes are being realised and will release State of the Environment Reports every two years to report on progress.

Data for the EIA will be collected from State and Federal governments, scientists, industry stakeholders, environmental projects and the broader community. The EIA Head will advise the Government on developing a national standard for environmental data and information and will be responsible for its implementation. Data collected and maintained by the EIA will be publicly available.

Next steps and implications

On 27 June 2024, the Senate referred the three Bills to the Environment and Communications Legislation Committee for consideration and report by 9 September 2024. The Bills passed the House of Representatives on 4 July 2024 and were read for a first time in the Senate on 12 August 2024.

International Sustainability Standards Board's next steps on biodiversity and human capital

In April 2024, the International Sustainability Standards Board (**ISSB**) announced that it will commence two new projects to research disclosure about risks and opportunities associated with biodiversity, ecosystems and ecosystem services and human capital.[87] The ISSB will assess how it might build from existing initiatives, including the Sustainable Accounting Standards Board (**SASB**) standards, Climate Disclosure Standards Board (**CDSB**) guidance and the work of the Taskforce on Nature-related Financial Disclosures (**TNFD**). Through the research projects, the ISSB will assess and define the limitations with current disclosure in these areas, identifying possible solutions and decide whether standard setting is required.

United Nations Principles for Responsible Investment Guidance for Investors on Biodiversity

In March 2024, the United Nations Principles for Responsible Investment (**PRI**) issued guidance for investors on incorporating biodiversity into existing operations and developing policies: 'An Introduction to Responsible Investment: Biodiversity for Asset Owners' (**PRI Guidance**). The PRI Guidance, which is intended to be a 'starter guide', explains the importance and relevance of biodiversity in the context of the investment process and outlines how asset owners might incorporate the issue into responsible investment policies, investment processes and stewardship practices.[88]

The PRI Guidance comprises two key parts. The first addresses the relevance of biodiversity, covering the science, why it should matter to investors and why government action matters to investors.

The second part addresses the approaches that asset owners can adopt in their investment processes, stewardship and disclosures, including possible actions that can be taken, available resources to do so and introductory questions to ask investment managers.

The PRI Guidance is designed to be an introductory and digestible guide for all investors, requiring limited prior subject knowledge. It is tailored towards mostly retail investors, equipping them to be better educated and well informed to ensure personal ethical considerations are reflected in their investing portfolio. Australian businesses should familiarise themselves with the PRI Guidance and ensure that they incorporate consideration of biodiversity into their operations and strategies in response to the growing demands of investors in relation to biodiversity conservation.

AUSTRALIAN BUSINESSES SHOULD FAMILIARISE THEMSELVES WITH THE PRI GUIDANCE AND ENSURE THAT THEY INCORPORATE CONSIDERATION OF BIODIVERSITY INTO THEIR OPERATIONS AND STRATEGIES

20%

The Nature Law puts measures in place towards restoring at least 20% of the EU's land and sea areas by 2030, and all ecosystems in need of restoration by 2050.

Guidance and consultation on high-integrity biodiversity credit markets

Biodiversity Credit Alliance Guidance

In April 2024, the Biodiversity Credit Alliance (**BCA**) issued a Guidance Paper on Mechanisms for Supply-side Quality and Integrity in the Biodiversity Credit Market, providing guidance for a high-integrity biodiversity credit market with strong foundations and principles for all market entrants (**BCA Guidance**).[89] The BCA is a voluntary international alliance, launched at the Convention on Biological Diversity COP15, that aims to support the Kunming–Montreal Global Biodiversity Framework and encourage private sector investment in biodiversity through biodiversity credits with social safeguards.[90] The BCA brings together diverse stakeholders, including Indigenous Peoples and Local Communities, to develop guidance for the formulation of a credible and scalable biodiversity credit market.

The BCA Guidance underscores the importance of a transparent, independent and rigorous review or assessment process for credit standards and methodologies. It draws lessons from the voluntary carbon markets, stressing the need for scientific rigor in quantifying biodiversity and ecosystem integrity. The BCA's mission includes steering the market development with high-level, science-based principles and encouraging best practices among market participants to maintain equitable, high-quality transactions that meet strict integrity criteria. In summary, the key elements of the BCA Guidance focus on an open and inclusive process involving a global multidisciplinary group; addressing key design challenges through systematic approaches in Measurement, Supply, Demand, Stewardship and Governance; ensuring the scientific quality and robustness of methodologies used to quantify biodiversity changes; and establishing transparent and rigorous review mechanisms for credit standards and methodologies to build trust in the market.

International Advisory Panel on Biodiversity Credits Consultation

Around the same time, the International Advisory Panel on Biodiversity Credits (**IAPBC**) commenced consultation on Archetypes for Biodiversity Credits to inform its forthcoming guidance on biodiversity credit markets. The IAPBC is an independent advisory panel, comprising more than 25 expert individuals from over a dozen countries, that facilitates the development of high-integrity biodiversity credit markets and enabling policy and regulatory mechanisms at an international level. The Consultation on Archetypes looked at a range of possible market models (**Archetypes**) for biodiversity credits and the key factors, challenges and opportunities that influence the success of these models, focusing on five key features: impact, operability, scalability, tradability and equitability. The consultation period was open from 18 April to 29 May 2024, with responses received from 82 respondents from 27 countries across all regions and a wide range of sectors and backgrounds. In parallel, the IAPBC ran several discussion sessions with more than 125 individuals, corporates and financial institutions to gather further insights.

On 3 July 2024, the IAPBC published its report detailing the consultation process and its key findings (**IAPBC Report**).[91] Notably, the IAPBC Report identified, amongst other key findings, that market actors value high-integrity biodiversity credit markets with strong rules, standards and guidelines and independent third-party oversight, and comprehensive consultation with Indigenous Peoples and local communities.[92]

What does this mean for the biodiversity credit market?

The key elements identified in the BCA Guidance, and the findings from the IAPBC Report, will be important for the development of a robust biodiversity credit market that can effectively contribute to the conservation and restoration of biodiversity, in alignment with global efforts under the Kunming–Montreal Global Biodiversity Framework. The IAPBC Report and the BCA Guidance should be used as a framework for Australian companies to guide their participation in the biodiversity credit market and meaningful contribution to the conservation and restoration of biodiversity.

EU Council formally adopts Nature Restoration Law

On 17 June 2024, the European Union Council adopted a world leading regulation on nature restoration (**Nature Law**).[93] First proposed by the European Commission in June 2022, the Nature Law forms part of the EU biodiversity strategy for 2030 and the wider European Green Deal package of policies. The Nature Law enters into force after 20 days, being 25 July 2024. The key objectives of the Nature Law include enabling the long-term recovery of nature in the EU's land and sea areas; contributing to the EU's climate mitigation and climate adaptation objectives; enhancing food security; and meeting international commitments including the Kunming-Montreal Global Biodiversity Framework.

The Nature Law puts measures in place towards restoring at least 20% of the EU's land and sea areas by 2030, and all ecosystems in need of restoration by 2050. It sets specific, legally binding targets and obligations for nature restoration in each of the listed ecosystems, from terrestrial to marine, freshwater and urban ecosystems. The Nature Law requires Member States to take specific action in respect of various threatened ecosystems, such as restoring 30% of drained peatlands under agricultural use by 2030 and 50% by 2050. Member States will be required to submit National Restoration Plans to the EU Council within two years of the enactment of the Nature Law, demonstrating how they intend to deliver on the targets set by the Nature Law. They will also be required to monitor and report on their progress, based on EU-wide biodiversity indicators.

The Nature Law is one of many regulations targeted towards improving ecological sustainability and biodiversity conservation and restoration. In particular, the upcoming COP16 is expected to result in more concrete strategies which State Parties can translate into national-level action plans and regulations, which in the EU will need to be informed by the Nature Law.

NSW releases its Plan for Nature

On 17 July 2024, the NSW Government released its Plan for Nature in response to the independent reviews of the *Biodiversity Conservation Act 2016* (**BC Act**) and the native vegetation provisions of the *Local Land Services Act 2013* (**LLS Act**).[94] The NSW Government has largely adopted the recommendations made in the two independent reviews into the Plan for Nature, which proposes three overarching actions: amending the BC Act to strengthen its objectives and operations, introducing a NSW Nature Strategy and amending the Land Management (Native Vegetation) Code.

In respect of the BC Act, the NSW Government acknowledges that nature is declining and that the BC Act is 'no longer fit to address the current and future biodiversity challenges'.[95] The Plan for Nature proposes 22 government actions to address this, including revising the objects and operative provisions of the BC Act to support the recovery of nature, improving biodiversity outcomes from the Biodiversity Offsets Scheme and improving biodiversity data collection and management. The Plan for Nature also commits to developing and implementing a NSW Nature Strategy under the BC Act, which will set goals and targets for conservation and restoration and guide public and private investment and action to restore nature.

In respect of the LLS Act, the NSW Government has proposed to strengthen the environmental protections in the Land Management (Native Vegetation) Code, made under the LLS Act, to better management environmental risks, reduce unallocated clearing, expand and support incentives for landholders, and improve transparency and awareness of the Land Management Framework. Some of the government actions proposed under the Plan for Nature include strengthening the prescriptions for managing invasive native species, re-introducing a cap on equity clearing and approval requirements, and increasing notification and certification requirements for land clearing.

The Plan for Nature acknowledges the wide range of cultural, social and economic interests Aboriginal people have in biodiversity and land management issues, and is underpinned by a commitment to undertake tailored engagement with Aboriginal organisations, communities and people to ensure their views, knowledge, values and interests inform the development and implementation of the NSW Government's initiatives. The NSW Government anticipates this engagement to commence in the second half of 2024.

Businesses can expect to see strengthened biodiversity and nature conservation reforms in New South Wales in the near future and would be advised to review the Plan for Nature, and subsequent reform proposals, to assess how their operations may be impacted and require amendment to align with the new Plan for Nature.

THE PLAN FOR NATURE ACKNOWLEDGES THE WIDE RANGE OF CULTURAL, SOCIAL AND ECONOMIC INTERESTS ABORIGINAL PEOPLE HAVE IN BIODIVERSITY AND LAND MANAGEMENT ISSUES

/ ANALYSIS

Implementing a Human Rights Act in Australia

IMPLICATIONS FOR BUSINESS

/ WORDS BY

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In June 2024, the Australian Human Rights Commission (AHRC) convened its second Free + Equal Human Rights Conference in Sydney (Conference) – the culmination of the AHRC's five-year-long project on proposing a human rights framework to ensure all people are treated with dignity, justice and respect.[96] The Conference aptly followed the release of the report of the Parliamentary Joint Committee on Human Rights, which recommended a national Human Rights Act as part of a revitalised human rights framework in Australia.

The Conference featured a range of human rights experts across civil society, legal, education and business sectors, who presented on their insights on the case for furthering human rights protection in Australia. This article focuses on those insights provided from the business sector, unpacking businesses' human rights obligations under international law and the crucial role businesses play in advancing human rights in Australia.

Setting the scene: Businesses' human rights obligations under international law

The intersection of businesses and human rights is an important issue which has gained significant international momentum. While governments have the primary obligation under international and domestic law to protect and promote human rights, businesses have a distinct responsibility to respect human rights.

This distinct responsibility of businesses is grounded in the United Nations Guiding Principles on Businesses and Human Rights (**Guiding Principles**),[97] which provide an authoritative global standard on how businesses are to prevent and address the risks of adverse human rights impacts within their activities. The Guiding Principles apply to all business enterprises, irrespective of size, sector, location, ownership or structure, and by effect, civil society, investors and other stakeholders with a framework to hold businesses accountable for their human rights performance. This obligation under international law to respect human rights is paramount and requires, if necessary, businesses to go beyond mere compliance with national legislation to fulfil.[98]

The Guiding Principles comprise three pillars, building on the United Nations 'Protect, Respect and Remedy' framework. Pillar 2 is the corporate responsibility to respect human rights, which means to avoid infringing on the human rights of others and addressing adverse human rights impacts with which they are involved. Corporate sustainability starts with businesses' value systems and incorporating a principles-based approach to doing business. This means operating in ways that, at a minimum, meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption.

The Guiding Principles enshrine key foundational and operational principles for the corporate responsibility to respect all human rights. There are three key policies and processes that businesses should have in place, at a minimum, to meet their responsibility to respect human rights: a policy commitment to respecting human rights, an ongoing human rights due diligence process, and processes to enable the remediation of any adverse human rights impacts.

In addition to the Guiding Principles, the United Nations Global Compact (Global Compact) was established to support companies to engage in business responsibly by aligning their strategies and operations with Ten Principles on human rights, labour, environment and anti-corruption; and take strategic actions to advance broader societal goals, such as the United Nations Sustainable Development Goals.[99] Notably, Principles 1 and 2 state that businesses should support and respect the protection of internationally proclaimed human rights and ensure that they are not complicit in human rights abuses. Increasingly we are seeing businesses committing to respect internationally recognised human rights in line with the Guiding Principles and to align themselves to the Global Compact Principles.

The European Union's recent adoption of the CSDDD, discussed in detail in Article [6] above, is a recent application of the Guiding Principles requiring entities to undertake comprehensive due diligence and identify and address adverse human rights and environmental impacts of their business actions within and outside the EU. The CSDDD is expressly guided by the Guiding Principles and notes, at Article 14, that 'strengthening the Union's engagement to actively promote the global implementation of the UN Guiding Principles' is a priority under the CSDDD.[100] In alignment with the Guiding Principles, the CSDDD is intended to foster sustainable and responsible corporate behaviour, that respects human rights, within businesses' operations and across their global value chains.

Human rights framework for businesses in Australia

The obligation on businesses under international law to respect human rights is paramount. However, adequate human rights legislation at a national level is critical for providing a clear, coherent and tailored framework for how businesses are to respect human rights in practice and the domestic standards to facilitate compliance at an international level.

In Australia, multinational enterprises are captured under the Organisation for Economic Co-operation and Development (**OECD**) Guidelines for Multinational Enterprises on Responsible Business Conduct (**OECD Guidelines**).[101] The OECD Guidelines are internationally agreed and government-backed recommendations that set out the responsible conduct standards that governments expect multinational enterprises to comply with across all areas of business activity, including human rights, labour rights, environment, employment, bribery, consumer interests, disclosure, science and technology, competition, taxation and more recently, climate change and biodiversity.[102] The Australian National Contact Point for Responsible Business Conduct is responsible for promoting the OECD Guidelines.[103] However, the OCED Guidelines only supplement Australian law and are not themselves legally binding.

Three Australian States and Territories have enacted human rights acts: the Australian Capital Territory, Victoria and Queensland. These frameworks impose, to varying extents, obligations on businesses in the context of human rights. However, this has been described as a 'piecemeal approach to human rights protection', covering only some rights and varying across jurisdictions.[104]

The proposal for a Federal Human Rights Act

Recently, the prospect of a federal human rights framework has arisen, following the launch of the AHRC's Position Paper outlining its proposal for a Human Rights Act for Australia in March 2023.[105] Around the same time, the Attorney-General referred to the Parliamentary Joint Committee on Human Rights (**Committee**) for inquiry and report, matters relating to the scope and effectiveness of Australia's human rights framework. In particular, the Committee was directed to consider whether the Australian Parliament should enact a Federal Human Rights Act and what elements that Act should include, including by reference to the AHRC's Position Paper on a Human Rights Act for Australia.[106]

In May 2024, the Committee delivered its Report and recommendations on a model for an Australian Human Rights Act (**HRA**).[107] The Committee's Report concluded that Australia needs a comprehensive and effective national human rights framework – a statutory Federal Human Rights Act. The Report made 17 recommendations addressing how a HRA should be established and the human rights framework revitalised.

What would a Human Rights Act look like?

The model for a HRA proposed by the AHRC, and endorsed by the Committee's Report, is envisioned as a comprehensive framework to protect and promote human rights across the nation, underpinned by a lengthy consultation process. The HRA would serve as the central piece of legislation, filling the gaps in the current piecemeal approach to human rights protection. It aims to provide enforceable remedies for human rights breaches, improve access to justice, and ensure accountability in government decision making.

The HRA would incorporate rights derived from both the International Covenant on Civil and Political Rights (**ICCPR**) and the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), as well as reflecting Australia's obligations arising from thematic treaties related to specific subsections of the population, such as children and persons with disabilities. It would also consider the rights and principles from the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), acknowledging Australia's particular obligations to Aboriginal and Torres Strait Islander Peoples.

The proposed rights to be included in the HRA therefore cover a wide range, from the right to life and an adequate standard of living, to cultural rights and the right to a clean, healthy and sustainable environment. The right to a healthy environment, which is currently only recognised in New South Wales, with a process for recognition commenced in the Australian Capital Territory, is one of the many gaps in the context of implementing human rights in Australia that would be assisted by a Federal HRA.

The proposed HRA model adopts a dialogue-based approach to rights protection, emphasising the supremacy of the parliament and proposing a positive duty on public authorities to act compatibly with human rights and to consider human rights when making decisions. This duty would apply to a broad range of public authorities, including government departments, agencies and private entities carrying out public functions. The HRA would also introduce procedural duties, such as a participation duty requiring public authorities to ensure the participation of certain groups in decisions that directly affect their rights.

What could a Federal Human Rights Act mean for businesses?

For businesses, the introduction of a HRA in Australia could have profound implications, necessitating a comprehensive understanding and integration of human rights considerations into their operations. As currently proposed, businesses won't automatically be required to comply with a HRA and will instead be encouraged to voluntarily opt-in to accept responsibility to comply. However, the HRA is proposed to align with the Guiding Principles, under which businesses already have a corporate responsibility to respect human rights and remediate any adverse impacts caused and would supplement existing laws, such as the Modern Slavery Act. Businesses that opt-in to comply with a HRA, and implement measures to respect the human rights protected therein into their business strategies, operations and relationships, will be well equipped to meet international human rights standards and evolving expectations.

Some of the key impacts for Australian businesses of increasing human rights regulations and a potential federal HRA include:

— **Compliance Requirements:** following the global regulatory trend, a federal HRA, if applicable to business, could require large Australian businesses to conduct thorough human rights due diligence to identify, prevent and mitigate any potential adverse impacts. Australian businesses operating within the value chain of regulated entities may also be required to implement human rights due diligence to support the regulated entities' compliance with due diligence requirements.

— **Legal and Reputational Risk:** as businesses expand their disclosures on human rights risks, exposure to legal and reputational risk may increase. Increasing human rights due diligence and disclosure requirements may increase the risk of human rights-washing (sometimes called 'bluewashing'), which refers to companies making misleading disclosures regarding their human rights risks or impacts. It is critical that businesses have in place robust processes to meet their public human rights commitments and reporting requirements and be prepared for any future due diligence requirements.

— **Social Responsibility and Investment:** beyond compliance, businesses may choose to support human rights through social investment, advocacy and engagement in public policy. Actions to support human rights could include initiatives to promote education, health and employment opportunities, particularly for marginalised groups.

— **Innovation and Leadership:** the implementation of a HRA, and evolving human rights responsibilities generally, presents opportunities for businesses to innovate and lead in the area of human rights, least of all for those businesses who opt-in to comply with a HRA. By embedding human rights into their core strategies and operations, businesses can influence industry standards and public policy and contribute to the advancement of human rights domestically and globally.

FOR BUSINESSES, THE INTRODUCTION OF A HRA IN AUSTRALIA COULD HAVE PROFOUND IMPLICATIONS, NECESSITATING A COMPREHENSIVE UNDERSTANDING AND INTEGRATION OF HUMAN RIGHTS CONSIDERATIONS INTO THEIR OPERATIONS.

/ ANALYSIS

New South Wales creates new industrial manslaughter offence

Overview of the Industrial Manslaughter Legislation in NSW

On 20 June 2024, the NSW Parliament passed the *Work Health and Safety Amendment (Industrial Manslaughter) Bill 2024*. The legislation introduces a new offence of industrial manslaughter into the *Work Health and Safety Act 2011* (NSW) (**WHS Act**), applicable to persons conducting a business or undertaking (**PCBUs**) and individuals in respect of workplace deaths involving gross negligence. The new offence will come into force on a day to be announced.

The amendments do not change the existing duties of individuals and PCBUs under the WHS Act. However, the significant penalties that apply to a conviction for industrial manslaughter heighten the importance of taking a proactive approach to meeting those duties.

Elements of industrial manslaughter

The industrial manslaughter offence is committed where a person:

— has a health and safety duty under the WHS Act (for example, a PCBU has a primary duty of care to take reasonably practicable steps to ensure the safety of its workers when at work);

— is a PCBU or an officer of PCBU (excluding volunteers);

— engages in conduct, either by an act or omission, that breaches their duty and causes the death of a worker or another individual, to whom the person's duty is owed; and

— engages in the conduct with gross negligence.

Gross negligence by a body corporate will be established where there is:

— inadequate corporate management, control or supervision of the conduct of one or more authorised persons; or

— a failure to provide adequate systems for conveying relevant information to relevant persons within the organisation.

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Key changes to the WHS Act

Other key changes to the WHS Act are:

1. **No limitation period:** Unlike other offences under the WHS Act, industrial manslaughter will be prosecuted without a limitation period.
2. **Alternative verdict:** If the court finds the individual or PCBU not guilty of industrial manslaughter, the court may convict for a lesser WHS offence, i.e. a Category 1 offence (see below), even if the time limitation period for the lesser offence has lapsed.
3. **Enforceable undertakings:** Enforceable undertakings will not be accepted by SafeWork NSW for contravention of the industrial manslaughter offence.
4. **Ministerial review:** The Minister must review the new provisions within 18 months of commencement.

Penalties

Bodies corporate convicted of industrial manslaughter may be fined a maximum of $20 million. Officers found guilty of industrial manslaughter may face a maximum penalty of 25 years in jail. There is no financial penalty for individual officers.

In contrast, the maximum penalty for the existing Category 1 offence (i.e., an offence resulting from gross negligence or reckless conduct that exposes a worker to a risk of death or serious injury or illness) as of 1 July 2024 is 10 years imprisonment for an individual and $10.4 million for a corporation.

Recommendations for PCBUs and officers

Steps by PCBUs to minimise their risk of the new offence include:

- pro-actively implementing appropriate systems to identify hazards, assess risks and put in place control measures;
- implementing and maintaining systems for incident, hazard and risk reporting, which encourage employees and other stakeholders to raise any WHS concerns;
- regular audits of the organisation's WHS systems to ensure any gaps that need to be addressed are identified; and
- incorporating WHS as an item on board agendas that is regularly discussed and managed by the senior management team.

Officers need to comply with their duty of due diligence under the WHS Act including by ensuring their PCBU is taking the steps referred to above.

For more detailed guidance or assistance in navigating these changes, contact G+T's employment team.

/ Q&A

Integrating Gender Considerations into Business

/ WORDS BY

Ilona Millar
Partner, Gilbert + Tobin

/ INTERVIEW BY

Amy Harrison
Gender Inclusion Expert

G+T: *The emerging area of business and human rights in international law is tailored, in part, at addressing imbalances of power and inequality. Inequality between genders is one of the oldest and most universal manifestations of discrimination, and women, even today, have fewer employment opportunities than men, and endure a range of social restrictions that impede their economic independence. In your view, how does gender inequality manifest in business in contemporary society?*

Amy: Gender inequality manifests in business in numerous ways – both within businesses and in society at large, which subsequently affects business practices. In terms of internal business practice, key issues include unequal pay, with women across almost every industry being paid less than men, particularly at more senior levels. In Australia, the gender pay gap stands at approximately 21.7%, which is relatively good globally but remains a significant issue.

Related to that, there's real inequality in terms of leadership and management. While businesses at the lower to mid levels may have good gender balance, that tends to change the further up the ranks you go. In Australia, a quarter of boards have no female representation, and only a quarter of boards are gender equal.

Similar statistics apply to CEO positions, with significantly fewer women in those roles compared to men.

Another key issue is workplace violence and harassment, which disproportionately affects women. This tends to be exacerbated by gender imbalances at leadership and management levels, which can make it challenging for women to report or address such issues as often that power imbalance is the dynamic in which an incident occurs.

There are other issues around life cycle protections that affect women specifically. For example, when women get pregnant and take parental leave, that tends to disadvantage women, whereas it actually often advantages men who have had a child – that's a real point of divergence. There is also a lack of understanding, sensitivity and support around women-specific processes like menstruation and menopause.

Finally, societal gender stereotypes persist within businesses. Women are typically viewed as the caregivers and providers of emotional support that can manifest in businesses in restrictive ways, limiting the types of roles that women are perceived suitable for within organisations.

G+T: *In 2011, the United Nations Guiding Principles on Business and Human Rights were adopted, providing guidelines for businesses to adhere to and respect human rights within their operations. Do you see a gender dimension to the Guiding Principles and how do you see businesses implementing the Guiding Principles in a gender-sensitive way?*

Amy: Yes, inherently there is a gender dynamic and dimension to the Guiding Principles. Having said that, and this goes across the board for all marginalised groups, if women aren't specifically named and their specific situations highlighted and understood, they tend to get ignored and their needs go unaddressed. While human rights should inherently apply to women and to gender, in practice, more specificity is required regarding gender-related implementation.

The Working Group on the Guiding Principles developed a paper in 2019 specifically on the gender dimensions of the guiding principles. The document sets out the specific ways in which gender inequality manifests in workplace discrimination and the different impacts specifically on women. It provides a framework for businesses as well as State actors and other entities to respond to gender inequality challenges.

The framework encourages businesses to be gender-responsive, offering practical measures that can be implemented to address gender inequality, particularly in the short term. It also promotes gender-transformative approaches that tackle underlying power dynamics and social norms that create gender inequality in the first place.

The document examines the gender dimensions of each of the 31 Guiding Principles, providing examples and setting out the lower to higher levels of ambition in achieving those principles. The document should be viewed as a pairing document to the overarching Guiding Principles. It is essential for businesses seeking to implement the Guiding Principles in a gender-sensitive manner, providing a roadmap for addressing gender-specific issues within the broader human rights framework.

G+T: *It is widely documented that women experience the adverse impacts of business activities uniquely and often disproportionately. But there are also intersecting layers and various forms of discrimination, meaning different women are affected uniquely by business activities depending on their age, ethnicity, religion, language or other minority status. How do you see this intersectionality exacerbating gender discrimination in business and how can businesses recognise the intersectionality of gender issues in their workplace and operations?*

Amy: Intersectionality is a critical issue. Often, there can be a tendency to see society as separate to the individual business, but the starting point has to be that if there's a power imbalance or social norms that perpetuate discrimination against a particular group in society, that is going to manifest in a business as well, unless that business is doing something consciously to counter it.

Across pretty much any marginalised or minoritised group, those groups experience compounded discrimination when gender intersects with other factors. For instance, women of colour are paid significantly less than white women across the board, experiencing discrimination based on both gender and race. Sectors with high proportions of zero-hour contracts or insecure jobs often employ more women, and often women from already economically marginalised backgrounds. This perpetuates that double economic and social discrimination.

A 2018 study in Victoria showed that women with disabilities are much more likely to be harassed in the workplace than women without disabilities. Similarly, Aboriginal and Torres Strait Islander women, as well as gender non-conforming or non-binary individuals, are more vulnerable to violence and harassment. These intersecting factors amplify the forms of gender discrimination discussed above – and if ignored, can mean that efforts to improve gender equality really only create change for a small group of (typically white, able-bodied, cisgender, neurotypical) women.

To address these issues, businesses must first recognise, understand, and truly commit to tackling the problem at a systemic and structural level. Businesses must take steps to dismantle internal biases among employees and leadership. This involves acknowledging that we all hold prejudices as products of society and actively working to examine and recognise these biases. Practical steps for businesses include:

— measuring comprehensive metrics beyond gender, including race, ethnicity and disability status. This can be done using tools like the Washington Group questions for disability assessment;
— conducting qualitative and quantitative analyses of pay and staff distribution across different groups and levels;
— providing platforms for affected or minoritised groups to voice concerns and shape the agenda for solution-finding, without burdening them with solving the problems; and
— empowering impacted individuals to take leadership roles in finding solutions.

Measuring inequality in terms of the numbers, but then also speaking to people, is critical to give different groups of people a voice to shape those processes and space to have a leadership role in finding the solutions. Letting people who are affected set the agenda is really important.

G+T: *In that respect – letting people who are impacted set the agenda – would that cover off on what concerted gender responsive action by business looks like? Or would you say that there is still more that needs to be done even in terms of aligning action with the Guiding Principles and the companion document for the UN Guiding Principles on gender?*

Amy: Concerted gender-responsive action by businesses requires a comprehensive approach and thinking through short-, medium- and long-term objectives. 'Diversity and Inclusion' has incredibly important aims, but is so often applied in a way that is quite superficial and reduces it down to a buzzword or tickbox exercise.

This creates a publicity level push for more inclusion, which can result in backlash, and then nothing really changes – and it can actually harm those who it was ostensibly meant to help.

It is important to set out what businesses can do in the short term to demonstrate how they're making change – but there also needs to be a more transformative, ambitious agenda in the long term to achieve systemic, structural change – and to build and sustain buy-in both from sceptics and those who want to see change.

In terms of practical short-term measures, these can include providing sanitary products in toilets, breastfeeding rooms in buildings, and offering flexible working options, compressed hours and working from home processes. These types of measures are important as they particularly benefit women and other minoritised groups.

Other practical measures to improve reporting mechanisms and internal processes can include implementing anonymous staff support reporting mechanisms, ideally separate from HR; establishing multiple lines of reporting to ensure that there is always a safe reporting option where incidents arise; and creating mechanisms to listen to and adequately respond to employee concerns.

A system backing up these reporting mechanisms is also critical. For example, in the hiring process, providing salary information to empower women and other marginalised groups to negotiate more effectively. Businesses can also ensure candidates have ample time to submit applications and prepare for interviews and provide interview questions in advance. This can help attract a more diverse pool of applicants.

Beyond these practical steps, businesses should be trying to change the culture of the organisation – the hearts and minds of the people that work in the organisation – to recognise the importance of gender equality and diversity. This is important, not only because it is the right thing to do but because there is a strong business case for doing so – stronger staff retention and reducing the commercial and reputation risks of getting gender equality wrong. Taking the time to bring people within the organisation on that journey is really important.

G+T: ***Bringing this discussion to a bit more of an industry-specific focus, are there particular industries and areas of business that maybe more susceptible to manifestations of gender inequality? And how should businesses be aware and take steps to minimise those industry-specific risks?***

Amy: There are definitely certain industries that are more susceptible to gender inequality, particularly those that are traditionally male-dominated and where that power imbalance is more obvious. For example, mining, financial services, energy and specific areas of sales. It is worth focusing in on those industries specifically, but it is also important to think about the cross-cutting themes across sectors – why are those industries particularly unequal? The answer to that provides insight into the pockets within all industries where men are still very much in the driving seat.

Some of the cross-cutting themes that can be challenging within any sector, include:

- businesses with a high number of zero-hour or insecure contracts, often filled by women. Globally, the garment and textiles sector is heavily dominated by women in insecure roles;
- multinational businesses operating with different stakeholders in countries with less stringent employment laws. These can be 'hotspots' for marginalised groups being taken advantage of within supply chains because they don't have the same protections that they would receive in Australia;
- sectors with historically masculine culture – the kind of business culture or environment where the loudest voice is the one that gets heard. This could apply to trading, finance or certain areas of sales. Often, this is where women and other marginalised groups are falling behind; and
- sectors with very long or inflexible working hours that disadvantage those with caring responsibilities, which typically fall to women. If a business environment isn't creating flexibility, that's where women or other marginalised groups having children or taking on caring responsibilities are going to start falling behind.

> "IT IS IMPORTANT TO SET OUT WHAT BUSINESSES CAN DO IN THE SHORT TERM TO DEMONSTRATE HOW THEY'RE MAKING CHANGE – BUT THERE ALSO NEEDS TO BE A MORE TRANSFORMATIVE, AMBITIOUS AGENDA IN THE LONG TERM TO ACHIEVE SYSTEMIC, STRUCTURAL CHANGE – AND TO BUILD AND SUSTAIN BUY-IN BOTH FROM SCEPTICS AND THOSE WHO WANT TO SEE CHANGE."

In regard to what businesses can do to minimise industry-specific risks, this can include:

- conducting gender equality and social inclusion audits to identify the bottlenecks in career progression for women and other minoritised groups and areas where employees do not feel as though they can 'bring their whole self to work'. This involves examining all systems, structures, hiring structures, HR systems, job descriptions and promotion processes from a gender, race, disability and inclusion perspective;
- implementing robust safeguard systems where people can safely report instances of feeling uncomfortable, particularly in those greyer areas of violence, harassment and discrimination. Women need to know that there is somewhere they can report information and know that it will be recorded, without necessarily escalating to formal processes. This is crucial because inequality and abuse of power thrive in silence; and
- supporting union memberships to provide employees with an independent platform for accountability. Businesses willing to work collaboratively with unions and support staff members being part of unions is important for providing a supporting environment for staff and a space to hold the business to account in a way that is collaborative rather than combative.

G+T: *Looking at the way in which businesses interact with different stakeholders and industry partners, what role do you see these third parties – unions, investors, financial institutions, civil society and other stakeholders – having to play in achieving gender equality and supporting businesses in this process?*

Amy: For many stakeholders, it is a process of finding that balance between carrot and stick or incentives and disincentives. For example, investors and financial institutions working with businesses can set the terms of the partnership to require the achievement of specific gender goals, both in the short term and the long term. This is what reporting is going to look like.

There is a similar but different role that Civil Society Organisations (CSOs) can play as well. On the one hand, there is the adversarial type of role that CSOs play in viewing businesses more as the 'dark side', rather than as partners. And this is important for accountability! But also engaging in the spirit of partnership is really important – recognising that many businesses want to do the right thing but don't necessarily know how or the practical steps to take, particularly when balancing many competing priorities.

CSO partnerships can play a more active role in helping businesses improve their practices, while still holding them to account but in a more collaborative way.

There are also often areas of business that want to hire more female or diverse candidates, but there aren't enough of those candidates applying for those jobs. This requires businesses to take a step back and look downstream at the causes of gender inequality. For example, by partnering with universities or schools in less economically affluent areas or supporting universities with women in leadership internships or programs. This enables businesses to establish those relationships and help improve the pipeline of great candidates from more diverse backgrounds, where they may not otherwise be coming from. This area of more grassroots partnerships is really important as well.

/ FEATURE

Will AI replace our jobs?

/ WORDS BY

Luke Heilbuth
CEO, BWD Strategic

Will AI make us obsolete?

I pride myself on clear communication. But the latest version of ChatGPT (4o) devalues my years of effort. The gap in quality between its writing and mine is closing.

To prove the point, I used ChatGPT to research content for this article. It saved me time and spawned useful insights.

But could all this convenience lead to human obsolescence? What if ChatGPT and other AI systems eventually push us out of jobs altogether?

Why we underestimate AI

Most people underestimate AI as a change maker. They remember it offering an incorrect response and dismiss its usefulness. This is a fallacy known as anchoring, where initial impressions influence our judgements.

More fundamentally, we are not good at grasping the difference between linear and exponential progress. Humans evolve and learn slowly. AI does so at unimaginable speed.

Ray Kurzweil, an AI founding father, explains it like this:

"Our intuition about the future is linear. But the reality of information technology is exponential, and that makes a profound difference. If I take 30 steps linearly, I get to 30. If I take 30 steps exponentially, I get to a billion."

No one knows how AI will change our work, because exponential progress has never occurred in a complex human system (like an economy) before. But the disruption we are living through is more profound than anything in history.

AI's creative capacity

While past technologies have changed our jobs and lives (think of the printing press and the internet), AI is our first invention that can *invent new things by itself.*

Back in 2016, an AI called AlphaGo shocked the scientific world by defeating world champion Lee Sedol in Go, an ancient and famously complex board game. A bizarre move in game two ultimately set up a path to victory that no human had considered in centuries of Go strategy.

So how might AI shape our working lives? Here are three scenarios.

OPTION 1

Goldilocks zone

Costs go down, productivity goes up, and human inputs shift to higher value tasks.

This scenario assumes that AI will create new and better jobs. Previous revolutions led to job losses initially, but eventually birthed new industries while lowering costs and enhancing productivity in existing ones.

In the digital revolution, Adobe software didn't destroy graphic design; it allowed designers to spend less time on formatting and more time on high-value concept creation. Similarly, AI could mature into an amplifier of human talent, freeing us from repetitive tasks.

AI is already democratising access to skills at low cost. Soon, you might be able to direct a video game or movie where the AI handles technical aspects like coding and scene rendering, leaving you to focus on storytelling and character development.

Under this happy scenario, many jobs evolve into a symbiotic relationship between human creativity and AI's computational power.

OPTION 2

A new era for 'jobs of the heart'

Human connection becomes the ultimate status symbol, raising the status of carers.

In this scenario, AI does supplant many jobs. But a fundamental shift in economic value occurs. Female-dominated 'jobs of the heart' – including nursing, palliative care and counselling – become higher status and compensation follows accordingly.

An elevated status for care workers could occur even though AI carers will be better listeners and advisers (AI can recall every past conversation and detect and respond to microscopic variations in human tone and facial expression).

But care workers 'win' anyway by being something AI cannot be – unapologetically human – fulfilling our deep-seated need as social primates for the empathy, compassion and attention of another. Human connection might become the ultimate status symbol in a world reliant on machines.

OPTION 3

Brave new world

Humans lose almost all economic value, condemned to lives of leisure.

Horse usage didn't plummet because horses got lazy as a species. Their economic value went to almost zero because tractors and cars were better at the same jobs. The same could happen to humans with the advent of Artificial General Intelligence (AGI), a future state where AI applies the sum of all knowledge better than we do.

If we reach AGI (Kurzweil thinks it will happen by 2029), human labour may no longer have functional economic value. AI will simply be better at everything.

Productivity would soar as AI solved intractable problems like zero emissions energy and climate change. We'd be left to pursue lives of leisure, with many of us choosing to retreat into the possibilities of hyper-realistic digital worlds.

But it remains an open question whether human beings can flourish without the routine of work, with all its stressors and setbacks. As Auschwitz survivor Viktor Frankl said, "Life is never made unbearable by circumstances, but only by lack of meaning and purpose."

/ ANALYSIS

Dhawura Ngilan Guide

PRACTICAL AND ACTIONABLE GUIDANCE FOR FIRST NATIONS ENGAGEMENT

Dhawura Ngilan, led by the First Nations Heritage Protection Alliance, released in March 2024 its first Business and Investor Guide[108], together with its Principles for Businesses and Investors,[109] for achieving best practice when engaging with First Nations communities and companies (Guide). The Guide evolved out of extensive consultation with First Nations Stakeholders and was published in partnership with the Australasian Responsible Investment Association and United Nations Global Compact Network Australia.

The initiative was launched in response to the destruction of the 46,000-year-old rock caves at Juukan Gorge in the Pilbara, which illustrated that Australia's laws and policies are largely unfit for purpose in protecting and conserving First Nations cultural heritage. It is therefore incumbent on businesses and investors to go beyond mere compliance with legislative standards and implement leading practice for protecting cultural heritage as identified by First Nations peoples.[110]

/ WORDS BY

Marshall McKenna
Partner, Gilbert + Tobin

The Guide sits in the context of the broader Dhawura Ngilan (**Remembering Country**) vision, which is borne from recognition of the difficulties in legislative reform to bring about increased protection of cultural heritage. The Dhawura Ngilan vision involves a strategy to try and bring in higher standards in the absence of legislative reform and ensure Free, Prior and Informed Consent (**FPIC**) is 'business as usual' for Australian businesses and their value chains.

The Guide has translated the Dhawura Ngilan vision for the private sector context, creating a unique opportunity for the private sector to surpass regulatory standards and play an active role in advancing this Vision. It embodies a collective vision shared by First Nations, businesses and investors to enhance First Nations' heritage laws and standards within the private sector, while upholding the human rights of First Nations Peoples in accordance with international agreements and community expectations, particularly the right to culture and right to self-determination.

The Guide signifies exemplary practice in the management of First Nations cultural heritage by businesses and investors. It equips stakeholders with the necessary information and tools to support the responsible management of First Nations cultural heritage and the meaningful implementation of FPIC processes. It is a best practice guide from a First Nations perspective and a framework intended to build from.

The Dhawura Ngilan Framework

The Guide provides a benchmark on what all companies should be doing with key actions, due diligence questions and 'red flags' for investors. It sets out 20 standards which collectively illustrate the expectations of First Nations peoples for how the private sector should interact with First Nations cultural heritage. A series of key actions associated with each standard for different types of businesses is provided.

The Guide also incorporates tailored guidance to assist investors to integrate cultural heritage considerations into decision making, including during due diligence, assessing disclosures, corporate engagement and stewardship.

The 20 standards embedded in the Guide are represented within the following six overarching guiding principles, which a holistic best practice approach should be based upon:

— **Respect and self-determination:** companies should respect, value and celebrate First Nations cultural heritage, as a living heritage, and recognise First Nations peoples as Custodians of their cultural heritage. Companies should also empower First Nations leadership and respect First Nations peoples' right to self-determination.

— **Collaboration and consent:** companies should engage early and broadly with interested First Nations parties on cultural heritage matters. In doing so, companies should ensure they have culturally appropriate processes in place, holistically apply FPIC consent processes in all cultural heritage matters and implement effective feedback processes and grievance mechanisms. Agreement-making should be approached on equal terms with First Nations people and with a view towards meaningful and mutually beneficial partnerships.

— **Truth and holistic heritage:** companies should actively support First Nations people engaging in truth-telling about heritage and maintaining and ensuring the endurance of First Nations cultural heritage. Companies should recognise and value intangible cultural heritage, uphold Indigenous Cultural and Intellectual Property rights, and respect Indigenous Data Sovereignty.

— **Caring for Country and culture:** companies should empower First Nations peoples to care for Country. This can include engaging in First Nations-led remediation of Country affected by land-use activities and projects. Companies should also adopt practices that support repatriation of Secret/Sacred material and ancestral remains, as advised by First Nations cultural authorities.

— **Supporting prosperity:** companies should support First Nations economic advancement in relation to cultural heritage. This includes by entering into benefit sharing agreements with First Nations people for use of their knowledge, heritage, resources and assets.

— **Advocacy and leadership:** companies should promote and support First Nations-led education about cultural heritage in Australia and internationally. This can include being involved in industry-based solutions for working with First Nations cultural heritage.

The six overarching principles are interconnected, and best viewed as a holistic concept rather than optional sections to borrow from.

Adopting the Dhawura Ngilan Guide Principles

The Guide marks a significant advancement in the management of First Nations peoples' cultural heritage. Businesses should embrace that effective heritage management requires both relationships and regulation and recognise the unique opportunity for industry to contribute to the vision of preserving First Nations culture for future generations.

We are already seeing an increase in active First Nations partnerships, particularly within the energy resources and mining sector. Companies are undertaking partnerships with communities and creating training and employment opportunities, sponsoring programs or putting up equity stakes in First Nations companies and initiatives. Through initiatives like these, partnerships can provide on-going and long-term positive engagement with First Nations communities and better outcomes for businesses. 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.

The Guide principles will play a crucial role in guiding industry on best practice and fostering meaningful partnerships with local Traditional Owners and First Nations communities.

/ **FEATURE**

Embracing the delayed gratification of sustainability

Many people confuse ESG and sustainability. However, they are subtly different. By mixing the two, businesses risk confusing their stakeholders and reducing their own success.

/ WORDS BY

Liam Jouannon
Strategy Manager, BWD Strategic

ESG as defined by the UN PRI is the pursuit of highest return in the context of sustainability-related risks and opportunities. Sustainability as defined by BWD is the pursuit of long-term shared value and resilience.

How did we end up confusing ESG and sustainability?

The practice of measuring environmental, social, and governance factors has been an official part of investment decision making since the 1960s. It gained traction in the 1980s when divestment campaigns emerged against firms doing business in apartheid South Africa.[111]

The term ESG was coined by the UN Global Compact in 2004.[112] In 2015, the UN PRI cemented the idea in its publication 'Fiduciary duty in the 21st century'. This report argued that company directors and investment managers had a fiduciary duty to consider environmental, social and governance issues in their decision making.[113] Three years later, Larry Fink's letter to CEOs announced BlackRock would consider ESG principles in its investment strategy.[114]

Companies responded to this signal from investors and made ESG a boardroom consideration. But many experts lost the rigour of the process.

While ESG considers sustainability issues, it prioritises the highest financial return. The reality many failed to communicate is that sustainability often comes at a price. Businesses and investors used ESG and sustainability interchangeably, miscommunicating their primary goal. It became unclear whether they were prioritising sustainability, or *profit* in the context of sustainability-related risks and opportunities.

Bringing sustainability into business under the guise of ESG has left many feeling deceived and defensive.[115, 116]

In Australia, the value of ESG was challenged when corporates failed to articulate an investment case for backing the Yes Voice campaign. BHP was one of few able to show a financial link between their activities on Indigenous land and accelerated reconciliation. Most corporate backers limited their argument to the benefits of an 'impact' return. Some investors argued this money would have better served shareholders if invested elsewhere. AGMs debated whether ESG had led companies to pursue impact at the expense of profit without shareholder support.[117]

Sustainability, unlike ESG, can effectively measure, manage and communicate this trade-off. It acknowledges the reality that financial costs are common in the short term and can articulate the longer-term business case for financial value creation and organisational resilience.[118] The challenge remains how to justify short-term financial costs in pursuit of long-term gain.

The first step is clear communication. Sustainability strategies are most effective when they own the fact that long-term value requires significant investment.

Boardrooms and AGMs should become open forums where investment in impact and long-term value is debated freely. Some investors such as super funds are willing to accept lower short-term returns in pursuit of long-term value creation and resilience. Unexpected losses, however, are never welcome.

ESG was created as a risk-based investor benchmark and is not synonymous with sustainability. Sustainability pursues long-term resilience and shared value, which may come at a short-term cost. However, money isn't the only form of value to investors. Businesses need to use sustainability concepts to measure and communicate the balance of financial and non-financial returns. This will enable transparent and rigorous sustainability strategies that attract informed investment. Rather than ESG on the side, a deep, honest pursuit of sustainability can build trust with stakeholders and enable long-term success.

BOARDROOMS AND AGMS SHOULD BECOME OPEN FORUMS WHERE INVESTMENT IN IMPACT AND LONG-TERM VALUE IS DEBATED FREELY.

/ **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. It's a busy start to the year so pop these in the diary.

SEPTEMBER

ReThink HK

12–13 September 2024
Hall 1, HKCEC
WanChai, Hong Kong

ReThink HK provides insight and inspiration for driving sustainable development across globally recognised risk and opportunity topics, from a Hong Kong context.

The 4th edition, which hosted over 6,000 attendees in September 2023, was designed specifically for business leaders, sustainability practitioners, and those responsible for researching and resourcing net zero and ESG strategies.

The two-day conference and expo demonstrated the business case for a just and sustainable transition, supported by real solutions that will accelerate Hong Kong towards a more resilient and sustainable future.

This year, BWD Strategic had two delegates attending, Susan Dyster, Senior Strategy Manager and Ben Ziser, Head of Strategy.

https://rethink-event.com/

OCTOBER

The Global Nature-Positive Summit 2024

8-10 October 2024
ICC, Sydney, Australia

The Summit aims to drive private sector investment to protect and repair our environment. Recognising the significant challenges facing the public and private sectors in moving to a nature-positive approach, the Summit will focus on three key themes to drive discussion, agreement and action including transparency and reporting, investment in nature and partnerships and capacity development.

https://www.dcceew.gov.au/environment/international/nature-positive-summit

SEPTEMBER

Nature Tech and Innovation Workshop

13 September 2024
Greenhouse Tech Hub,
Salesforce Tower,
Sydney NSW

BWD Strategic, in partnership with Greenhouse, is hosting a workshop on the role of technology and innovation in nature with the goal of exploring how new and emerging solutions could be enhanced through our collaborative efforts.

Key perspectives include: *Setting the context* with an update on the Nature Roundtable's Blueprint for Nature-Positive Australia; *Investor Perspectives* outlining the role technology is playing in creating an asset class around nature; *Industry Perspectives* discussing the key challenges industry is seeking to solve today and in the pipeline; and *Nature Tech Perspectives* overview on what founders are working on and the challenges and opportunities.

Email harry.guinness@greenhouse.tech

OCTOBER

Why traditional business models fail: Design for long-term value and impact

4 October 2024
National Design Centre
111 Middle Rd, Singapore

Join us for this Singapore Design Week special. BWD Strategic has a particular take on the objective of sustainability: *To build long-term value and resilience for an organisation.* In this event, we'll show you how the right design approach can embed resilience and value creation into every business. With expert panellists, a hands-on workshop, practical take-aways and networking opportunities, you'll learn how to evolve sustainability from a buzzword into a business strategy that works.

https://www.eventbrite.com.au/e/why-traditional-business-models-fail-design-for-long-term-value-impact-tickets-987484792597

OCTOBER

UNiting Business LIVE Australia: Sustainability in Action

30-31 October 2024
Jones Bay Wharf,
Pyrmont NSW

Shaping the future of sustainable business in Australia. In a watershed moment for corporate accountability, UNiting Business LIVE Australia will equip businesses to navigate ongoing socio-environmental and regulatory changes.

This event from the UN Global Compact Network Australia (UNGCNA), the Country Network of the world's largest corporate sustainability initiative, presents insights from international sustainability leaders to solve the most pressing challenges faced by Australian organisations today.

https://unglobalcompact.org.au/conference/uniting-business-live-australia-2024/

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BWD is an advisory firm that specialises in sustainable business strategy. By combining best practice sustainability strategy with original design and data visualisation, we cut through the complexity of sustainability to create a lasting competitive advantage for our clients.

bwdstrategic.com

/ ENDNOTES

1 See 'Budget Paper No.2: Budget Measures', *Commonwealth of Australia* (Budget 2024-2025, 14 May 2024) https://budget.gov.au/content/bp2/download/bp2_2024-25.pdf.

2 'Future Made in Australia Bill 2024', *Parliament of Australia* (Web page, 3 July 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7219.

3 Hon Ed Husic, 'New battery strategy to make more batteries here', *Department of Industry, Science and Resources* (Media release, 23 May 2024) https://www.minister.industry.gov.au/ministers/husic/media-releases/new-battery-strategy-make-more-batteries-here.

4 Hon Ed Husic, 'New battery strategy to make more batteries here', *Department of Industry, Science and Resources* (Media release, 23 May 2024) https://www.minister.industry.gov.au/ministers/husic/media-releases/new-battery-strategy-make-more-batteries-here.

5 'New Vehicle Efficiency Standard Bill 2024', *Parliament of Australia* (web page, 31 May 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7182.

6 'Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024', *Parliament of Australia* (Web page, 24 June 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7176.

7 *Supplementary Explanatory Memorandum: Amendments to be Moved on Behalf of the Government* (Parliament of the Commonwealth of Australia, 1 July 2024) https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7176_ems_bf07f244-db14-4366-aa7e-fdc3d67257a5/upload_pdf/Supplementary%20EM_JC013457.pdf;fileType=application%2Fpdf.

8 'Australian Sustainability Reporting Standards – Disclosure of Climate-related Financial Information', *AASB* (Exposure Draft, 23 October 2023) https://www.aasb.gov.au/admin/file/content105/c9/AASBED_SR1_10-23.pdf at [Aus 22.1], [AusB 12.1].

9 'Start preparing now: Early ASIC guidance on the mandatory climate disclosure regime', *ASIC* (Press release, 23 April 2024) https://asic.gov.au/about-asic/news-centre/speeches/start-preparing-now-early-asic-guidance-on-the-mandatory-climate-disclosure-regime/.

10 Hon Chris Bowen, 'Largest ever single tender for renewable energy in Australia opens for bids', *Department of Climate Change, Energy, the Environment and Water* (Media release, 31 May 2024) https://minister.dcceew.gov.au/bowen/media-releases/largest-ever-single-tender-renewable-energy-australia-opens-bids.

11 'Australian Clean Energy Summit 2024: Keynote Address By Simon Duggan', *DCCEEW* (Press release, 16 July 2024) https://www.dcceew.gov.au/about/news/australian-clean-energy-summit-2024-keynote-address#:~:text=Keynote%20speech%20%2D%20Accelerating%20the%20Transition%3A%20Ensuring%20the%20Capacity%20Investment%20Scheme%20Delivers&text=We%20meet%20here%20today%20on,Elders%20past%2C%20present%20and%20emerging.

12 Hon Chris Bowen, 'Largest ever single tender for renewable energy in Australia opens for bids', *Department of Climate Change, Energy, the Environment and Water* (Media release, 31 May 2024) https://minister.dcceew.gov.au/bowen/media-releases/largest-ever-single-tender-renewable-energy-australia-opens-bids.

13 'Capacity Investment Scheme NEM Generation: CIS Tender 1 – NEM Generation', *AEMO Services* (Web page, 2024) https://aemoservices.com.au/tenders/CIS-Tender-1-Generation-NEM.

14 'Australia's offshore wind areas', *DCCEEW* (Web page, 6 March 2024) https://www.dcceew.gov.au/energy/renewable/offshore-wind/areas.

15 'First round of offshore feasibility licences granted ', *Department of Climate Change, Energy, the Environment and Water* (News release, 1 May 2024) https://www.dcceew.gov.au/about/news/first-round-offshore-feasibility-licenses-granted.

16 'Gippsland, Victoria declared offshore wind area', *Department of Climate Change, Energy, the Environment and Water* (Web page, 1 May 2024) https://www.dcceew.gov.au/energy/renewable/offshore-wind/areas/gippsland.

17 *Climate Change and Energy Legislation Amendment (Renewable Energy and Storage Targets) Act 2024* (Vic) https://www.legislation.vic.gov.au/as-made/acts/climate-change-and-energy-legislation-amendment-renewable-energy-and-storage-targets.

18 *Climate Change Act 2022* (Cth) section 10.

19 *Climate Change and Greenhouse Gas Emissions Reduction (Miscellaneous) Amendment Bill 2024* (SA) section 4. To track the Bill, see 'Climate Change Act – Draft Amendment Bill', *YourSAy Government of South Australia* (Web page, 2024) https://yoursay.sa.gov.au/climate-change-bill.

20 'SA eclipses emissions reduction target', *Government of South Australia* (Web page, 18 April 2024) https://www.premier.sa.gov.au/media-releases/news-items/sa-eclipses-emissions-reduction-target.

21 *Clean Economy Jobs Act 2024* (Qld) section 5.

22 *Clean Economy Jobs Act 2024* (Qld) sections 5-6.

23 'Queensland hits emissions reduction target eight years early', *Queensland Government* (Media statement, 20 April 2024) https://statements.qld.gov.au/statements/100160#:~:text=Quotes%20attributable%20to%20Minister%20Mick%20de%20Brenni%3A&text=%E2%80%9CNow%20that%20we've%20hit,2050%20firmly%20in%20our%20sights.

24 *Energy (Renewable Transformation and Jobs) Act 2024* (Qld) section 9.

25 Interim targets adopted by the Victorian Government pursuant to *Climate Change Act 2017* (Vic) section 10. See, 'Climate action targets', *Victoria State Government* (Web page, 23 May 2023) https://www.climatechange.vic.gov.au/climate-action-targets.

26 *Renewable Energy (Jobs and Investment) Act 2017* (Vic) section 7(c) and 7(d).

27 *Renewable Energy (Jobs and Investment) Act 2017* (Vic) section 7(a) and 7(b). See, 'Victorian renewable energy and storage targets', *Victoria State Government* (Web page, 6 May 2024) https://www.energy.vic.gov.au/renewable-energy/victorian-renewable-energy-and-storage-targets.

28 'Government Emissions Interim Target', *Government of Western Australia* (Web page, 5 July 2024) https://www.wa.gov.au/service/environment/business-and-community-assistance/government-emissions-interim-target.

29 *Climate Change Bill 2023* (WA) section 7-8.

30 *The Climate Change Bill 2023* (WA) can be tracked at 'Climate Change Bill 2023', *Parliament of Western Australia* (Web page, 30 November 2023) https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=7A17F706ED198C4148258A750008D497.

31 *Climate Change (State Action) Amendment Act 2022* (Tas) section 5, *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) section 6 and *Climate Change (Net Zero Future) Act 2023* (NSW) section 9.

32 'Tasmanian Greenhouse Gas Emissions Report 2023', *Tasmanian Government* (Report, 1 June 2023) https://www.recfit.tas.gov.au/__data/assets/pdf_file/0017/511127/Tasmanian_Greenhouse_Gas_Emissions_Report_2023.pdf.

33 'Northern Territory Climate Change Response: Towards 2050', *Northern Territory Government* (Report, July 2020) https://depws.nt.gov.au/__data/assets/pdf_file/0005/904775/northern-territory-climate-change-response-towards-2050.pdf.

34 'Draft Climate Change Assessment Requirements and Guide', *NSW EPA* (20 May 2024) https://yoursay.epa.nsw.gov.au/draft-climate-change-assessment-requirements-and-guide.

35 'Guideline: Greenhouse gas emissions', *Queensland Government* (Guidance Report, 15 May 2024) https://www.desi.qld.gov.au/policies?a=272936:policy_registry/era-gl-greenhouse-gas-emissions.pdf.

36 'Greenwashing', *Parliament of Australia* (Web page, 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing.

37 'Greenwashing', *Parliament of Australia* (Web page, 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Environment_and_Communications/Greenwashing.

38 See, in particular, Environment and Communications Reference Committee, 'Greenwashing', *Commonwealth of Australia* (Hansard, 22 April 2024) (Greenwashing Inquiry Hansard April 2024) 1-6, https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/27925/toc_pdf/Environment%20and%20Communications%20References%20Committee_2024_04_22.pdf;fileType=application%2Fpdf#search=%22committees/commsen/27925/0000%22.

39 Greenwashing Inquiry Hansard April 2024, 3.

40 Greenwashing Inquiry Hansard April 2024, 4.

41 Greenwashing Inquiry Hansard April 2024, 12-5 and 'Clean image, dirty truth | Between the Lines', *The Australian Institute* (Newsletter, 26 April 2024) https://australiainstitute.org.au/post/clean-image-dirty-truth-between-the-lines/.

42 GLAD bags manufacturer in court for '50% ocean plastic' claims', *ACCC* (Media release, 18 April 2024) https://www.accc.gov.au/media-release/glad-bags-manufacturer-in-court-for-50-ocean-plastic-claims#:~:text=The%20ACCC%20has%20instituted%20proceedings,in%20breach%20of%20the%20Australian.

43 'Sustainability collaborations and Australian competition law', *ACCC* (Draft for consultation, July 2024) https://www.accc.gov.au/system/files/Sustainability-collaborations-and-Australian-competition-law-draft-for-consultation-July-2024.pdf.

44 *Long v Koninklijke Lucshtvaart Maatschappij, N.V* (ECLI:NL:RBAMS:2024:1512, 20 March 2024, District Court of Amsterdam).

45 *Directive (EU) 2024/825 of the European Parliament and of the Council* (2024/825, 28 February 2024) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202400825.

46 'Commission and national consumer protection authorities starts action against 20 airlines for misleading greenwashing practices', *European Commission* (Press release, 30 April 2024) https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2322.

47 'Aviation Green Paper', *Australian Government* (Web page) https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-green-paper.

48 'Aviation White Paper', *Australian Government* (Web page) https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper.

49 'Aviation White Paper', *Australian Government* (Web page) https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper.

50 'Submission in response to the Aviation Green Paper', *ACCC* (Submission, November 2023) https://www.accc.gov.au/system/files/accc-submission-to-aviation-green-paper-nov-23.pdf.

51 'Australia issues inaugural $7 billion green bond', *Commonwealth Department of Treasury* (Media release, 4 June 2024) https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/australia-issues-inaugural-7-billion-green-bond#:~:text=The%20green%20bond%20gives%20investors,adaptation%20and%20improved%20environmental%20outcomes.

52 'Green Treasury Bonds', *Australian Government* (web page, June 2024) https://www.aofm.gov.au/securities/green-bond-program.

53 Treasury, *Sustainable Finance Roadmap*, (Australian Government, June 2024).

54 'Guidelines for High Integrity Use of Carbon Credits', *IETA* (Guidelines, April 2024) https://ieta.b-cdn.net/wp-content/uploads/2024/04/IETA_VCM-Guidelines.WEB-2.pdf.

55 'Statement from the SBTi Board of Trustees on use of environmental attribute certificates, including but not limited to voluntary carbon markets, for abatement purposes limited to scope 3', *Science Based Targets* (Web page, 9 April 2024) https://sciencebasedtargets.org/news/statement-from-the-sbti-board-of-trustees-on-use-of-environmental-attribute-certificates-including-but-not-limited-to-voluntary-carbon-markets-for-abatement-purposes-limited-to-scope-3.

56 'The SBTi releases new reports to help accelerate corporate climate action beyond the value chain', *Science Based Targets* (Web page, 28 February 2024) https://sciencebasedtargets.org/news/the-sbti-releases-new-reports-to-help-accelerate-corporate-climate-action-beyond-the-value-chain.

57 'FACT SHEET: Biden-Harris Administration Announces New Principles for High-Integrity Voluntary Carbon Markets', *The White House* (Press release, 28 May 2024) https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/28/fact-sheet-biden-harris-administration-announces-new-principles-for-high-integrity-voluntary-carbon-markets/.

58 'Integrity Council announces first high-integrity CCP-labelled carbon credits, as assessments continue', *ICVCM* (Press release, 6 June 2024) https://icvcm.org/integrity-council-announces-first-high-integrity-ccp-labelled-carbon-credits-as-assessments-continue/#:~:text=Assessment%20of%20Carbon%2DCrediting%20Programs,the%20

/Endnotes

high%2Dintegrity%20CCP%20criteria.

59 'Integrity Council reveals first CCP-eligible carbon-crediting programs', *ICVCM* (Press release, 5 April 2024) https://icvcm.org/integrity-council-reveals-first-carbon-crediting-programs/#:~:text=In%20combination%2C%20the%20Integrity%20Council's,at%20the%20end%20of%202023.

60 'Corporate sustainability reporting', *European Commission* (web page, 2024) https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en#:~:text=New%20rules%20on%20corporate%20sustainability,that%20companies%20have%20to%20report.

61 'About GRI', *GRI* (web page) https://www.globalreporting.org/about-gri/.

62 https://www.globalreporting.org/public-policy/legislation-and-regulation/.

63 See 'Double Materiality: The Guiding Principle for Sustainability Reporting', *GRI* (Guide, March 2024) https://www.globalreporting.org/media/rz1jf4bz/gri-double-materiality-final.pdf.

64 See 'Due Diligence: Can managing adverse impacts be simplified?', *GRI* (Guide, March 2024) https://www.globalreporting.org/media/rcqpsy01/gri-due-diligence-guide-final.pdf.

65 'CSRD: Implications for companies outside the EU', *GRI* (Guide, March 2024) https://www.globalreporting.org/media/3fxpjvfp/gri-reporting-outside-eu-final.pdf.

66 'Shaping the future of sustainability policy', *GR* (Web page, 27 March 2024) https://www.globalreporting.org/news/news-center/shaping-the-future-of-sustainability-policy/.

67 'GRI and IFRS deepen interoperability of sustainability reporting', *XBRL* (Web page, 31 May 2024) https://www.xbrl.org/news/gri-and-ifrs-deepen-interoperability-of-sustainability-reporting/.

68 'Kunming-Montreal Global Biodiversity Framework', Conference of the Parties to the Convention on Biological Diversity (CBD/COP/DEC/15/4, 19 December 2022) accessible at: https://www.cbd.int/doc/decisions/cop-15/cop-15-dec-04-en.pdf.

69 Taskforce on Nature-related Financial Disclosures, 'TNFD Early Adopters' available at: https://tnfd.global/engage/inaugural-tnfd-early-adopters/.

70 Taskforce on Nature-related Financial Disclosures, 'TNFD Adopters', available at: https://tnfd.global/engage/tnfd-adopters/.

71 Sebastian Hartford-Davis and Zoe Bush, 'Joint Memorandum of Opinion - Nature-related risk and directors' duties', *Pollination Group* (Opinion, November 2023) https://pollinationgroup.com/global-perspectives/australian-company-directors-and-nature-related-risk-a-new-legal-opinion/#.

72 Australian Government Treasury, *Sustainable Finance Roadmap* (June 2024), available at: https://treasury.gov.au/sites/default/files/2024-06/p2024-536290.pdf (Sustainable Finance Roadmap).

73 Key federal initiatives include the proposed-climate related financial disclosures legislation which we have published on article on: https://www.gtlaw.com.au/knowledge/climate-related-financial-disclosure-new-framework-proposed and ASIC Information Sheet 271 on 'How to avoid greenwashing when offering or promoting sustainability-related products' available at https://asic.gov.au/regulatory-resources/financial-services/how-to-avoid-greenwashing-when-offering-or-promoting-sustainability-related-products/.

74 Sustainable Finance Roadmap.

75 Sustainable Finance Roadmap.

76 Australian Government Treasury, *Sustainable Finance Strategy: Consultation paper* (November 2023), available at: https://treasury.gov.au/sites/default/files/2023-11/c2023-456756.pdf.

77 Joe Longo, 'Start preparing now: Early ASIC guidance on the mandatory climate disclosure regime', ASIC (speech, 23 April 2024) https://asic.gov.au/about-asic/news-centre/speeches/start-preparing-now-early-asic-guidance-on-the-mandatory-climate-disclosure-regime/.

78 'ISSB to commence research projects about risks and opportunities related to nature and human capital', *IFRS* (Web page, 23 April 2024) https://www.ifrs.org/news-and-events/news/2024/04/issb-commence-research-projects-risks-opportunities-nature-human-capital/.

79 Sustainable Finance Roadmap.

80 *Catherine Jean Rossiter v ANZ Group Holdings Limited* (NSD1315/2023, Federal Court of Australia). The documents filed in these proceedings are available at: https://www.comcourts.gov.au/file/Federal/P/NSD1315/2023/actions.

81 Genevieve Redgrave, 'Nature resolutions hit double figures in North America', *Environmental Finance* (Web page, 28 March 2024) https://www.environmental-finance.com/content/news/nature-resolutions-hit-double-figures-in-north-america.html.

82 Australian Government Department of Climate Change, Energy, the Environment and Water, 'Global Nature Positive Summit Outline' available at https://www.dcceew.gov.au/sites/default/files/documents/global-nature-positive-summit-outline-brochure.pdf.

83 'Nature Positive (Environment Protection Australia) Bill 2024 [and related Bills]', *Parliament of Australia* (Web page, 24 June 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd2324a/24bd075#:~:text=The%20Nature%20Positive%20(Environment%20Protection,of%20the%20CEO%20and%20EPA.

84 'Nature Positive (Environment Protection Australia) Bill 2024', *Parliament of Australia* (Web page, 4 July 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7192.

85 'Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024', *Parliament of Australia* (Web page, 4 July 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7195.

86 'Nature Positive (Environment Information Australia) Bill 2024', *Parliament of Australia* (Web page, 4 July 2024) https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bId=r7193.

87 'ISSB to commence research projects about risks and opportunities related to nature and human capital', *IFRS* (Web page, 23 April 2024) https://www.ifrs.org/news-and-events/news/2024/04/issb-commence-research-projects-risks-opportunities-nature-human-capital/.

88 'An introduction to responsible investment: Biodiversity for asset owners', *PRI* (Web page, 26 March 2024) https://www.unpri.org/introductory-guides-to-responsible-investment/an-introduction-to-responsible-investment-biodiversity-for-asset-owners/12202.article.

89 'Review Mechanisms for Supply-side Quality and Integrity in the Biodiversity Credit Market', *BCA* (Issue Paper No. 2, April 2024) https://www.biofin.org/sites/default/files/content/knowledge_products/Review%20Mechanisms%20for%20Supply-side%20Quality%20and%20Integrity%20in%20the%20Biodiversity%20Credit%20Market.pdf.

90 https://www.biofin.org/sites/default/files/content/knowledge_products/Review%20Mechanisms%20for%20Supply-side%20Quality%20and%20Integrity%20in%20the%20Biodiversity%20Credit%20Market.pdf.

91 'IAPB Consultation on Archetypes Executive Summary', *IAPBC* (Report, 3 July 2024) https://www.iapbiocredits.org/news-events/consultation-2-launch.

92 'IAPB Consultation on Archetypes Executive Summary', *IAPBC* (Report, 3 July 2024) 5 https://www.iapbiocredits.org/news-events/consultation-2-launch.

93 'Nature restoration law: Council gives final green light', *European Council* (Press release, 17 June 2024) https://www.consilium.europa.eu/en/press/press-releases/2024/06/17/nature-restoration-law-council-gives-final-green-light/. A copy of the Nature Restoration Law can be accessed at https://data.consilium.europa.eu/doc/document/PE-74-2023-REV-1/en/pdf.

94 'NSW Plan for Nature', *NSW Government* (Factsheet, July 2024) https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/nsw-plan-for-nature.

95 'NSW Plan for Nature', *NSW Government* (Factsheet, July 2024) 8 https://www.nsw.gov.au/departments-and-agencies/the-cabinet-office/resources/nsw-plan-for-nature.

96 'Free + Equal Human Rights Conference 2024', *AHRC* (Web page) https://humanrights.gov.au/free-and-equal-human-rights-conference-2024.

97 'Guiding Principles on Business and Human Rights', *United Nations* (Guidance, 2011) https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

98 David Boyd, 'Expert Seminar on the responsibility of business enterprises to respect the human right to a clean, healthy and sustainable environment' *United Nations Human Rights Council* (UN Doc A/HRC/55/41, 2 January 2024) [15], accessible at https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/55/41&Lang=E.

99 'The Ten Principles of the UN Global Compact', *United Nations Global Compact* (Web page) https://unglobalcompact.org/what-is-gc/mission/principles.

100 'European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937', *European Parliament* (Web page, 24 April 2024) [14] https://www.europarl.europa.eu/doceo/document/TA-9-2024-0329_EN.html#title2.

101 *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, Paris, 2023) https://doi.org/10.1787/81f92357-en.

102 Australian National Contact Point for Responsible Business, 'OECD Guidelines', *Australian Government Treasury* (Web page, 2023) https://ausncp.gov.au/responsible-business-conduct/oecd-guidelines.

103 *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, Paris, 2023) https://doi.org/10.1787/81f92357-en.

104 'Inquiry into Australia's Human Rights Framework Report', *Parliament of Australia* (Web page, May 2024) xvii, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report.

105 'A National Human Rights Act for Australia', *Australian Human Rights Commission* (Web page, 7 March 2023) https://humanrights.gov.au/human-rights-act-for-australia.

106 See 'Inquiry into Australia's Human Rights Framework', *Parliament of Australia* (Web page, May 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework.

107 'Inquiry into Australia's Human Rights Framework Report', *Parliament of Australia* (Web page, May 2024) https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Report.

108 'A Guide for Businesses and Investors', *Dhawura Ngilan* (Guide, 2024) https://culturalheritage.org.au/wp-content/uploads/2024/03/DNBII_BusinessesInvestorsGuide.pdf.

109 'Principles for Businesses and Investors', *Dhawura Ngilan* (Guide, 2024) https://culturalheritage.org.au/wp-content/uploads/2024/03/DNBII_PrinciplesGuide.pdf.

110 'Dhawura Ngilan Business and Investor Guides Launch', *First Nations Heritage Protection Alliance* (Web page, 2024) https://culturalheritage.org.au/business-investor-initiative/.

111 MSCI. 2024. *The Evolution of ESG investing.* Accessed March 18, 2024. https://www.msci.com/esg-101-what-is-esg/evolution-of-esg-investing.

112 Krantz, Tom. 2024. *The history of ESG: A journey towards sustainable investing.* 8 February. https://www.ibm.com/blog/environmental-social-and-governance-history/.

113 UN PRI. 2015. *Fiduciary duty in the 21st century.* Geneva: UNEP FI.

114 Fink, Larry. 2018. *A sense of purpose. BlackRock.*

115 Binnie, Isla. 2023. *BlackRock's Fink says he's stopped using 'weaponised' term ESG.* 27 June. Accessed March 18, 2024. https://www.reuters.com/business/environment/blackrocks-fink-says-hes-stopped-using-weaponised-term-esg-2023-06-26/.

116 Choe, Stan. 2023. *What is ESG investing and why do some hate it so much?* 2 March. Accessed March 18, 2024. https://apnews.com/article/what-is-esg-investing-3a98b6f584357b8e10c31b1ff93ce4b6.

117 Hewett, Jennifer. 2023. *"How big business will handle a backlash over the Voice."* Financial Review, 16 October.

118 Hernandez, Ricardo Jimenez. 2022. *ESG in transition: Can sustainability still save the world?* 11 August. Accessed March 18, 2024. https://www.irmagazine.com/esg/esg-transition-can-sustainability-still-save-world.