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ISSUE TWO, MAY 2023

QUARTERLY ESG UPDATE

A strategic review of the latest in sustainability.

/ FEATURE

Resilience & security

/ ALSO IN THIS ISSUE

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Ilona Millar
Partner, Gilbert + Tobin

Tom Brett
Partner, Gilbert + Tobin

Karen Evans-Cullen
Partner, Gilbert + Tobin

Michael Caplan
Partner, Gilbert + Tobin

Melissa Fai
Partner, Gilbert + Tobin

Andrew Hii
Partner, Gilbert + Tobin

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Visit bwdstrategic.com

Luke Heilbuth
CEO, BWD Strategic

Dr. Alex Gold
CEO, BWD Strategic (North America)

Susan Dyster
Senior Strategy Manager, BWD Strategic

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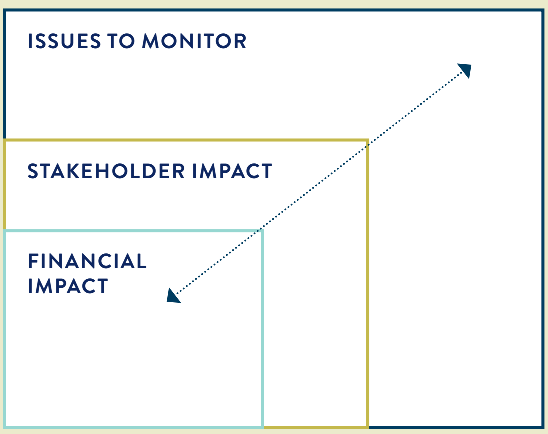

/ FEATURE

Sustainability reporting trends for 2023

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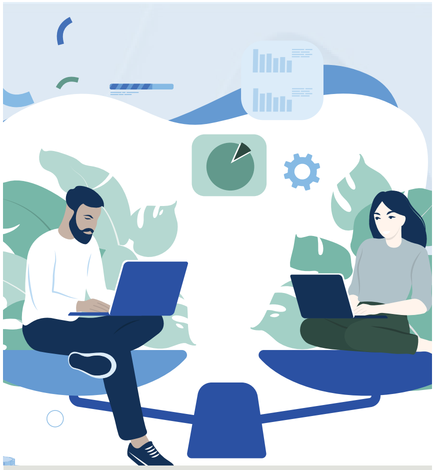

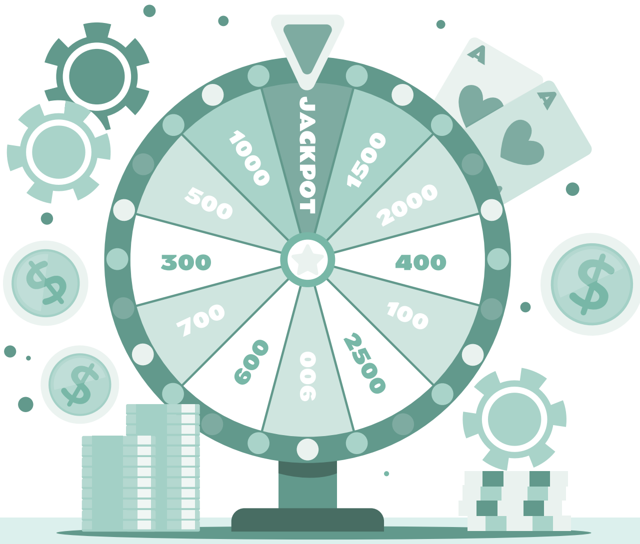
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/ IN BRIEF

ESG reporting updates

2023 reporting trends from the International Sustainability Standards Board (ISSB)

17 FEBRUARY 2023

ISSB will allow companies to use ESRS and GRI

View update at IFRS Foundation

The ISSB is focused on the information needs of investors (who are assumed to want information about business performance), while frameworks like GRI are interested in serving the needs of multiple stakeholders (who are assumed to want information about business impacts). While it would not make sense for the ISSB to simply adopt GRI as its own standard, GRI is a widely-established standard that many companies already use. Allowing the use of GRI would thus facilitate the uptake of the ISSB standards by existing GRI reporters.

At its February 2023 meeting, the ISSB confirmed that it will allow companies to consider the GRI Standards and the European Sustainability Reporting Standards in identifying disclosures about sustainability-related risks and opportunities. These sources of guidance will be listed in the appendices to IFRS S1. In making this decision, the ISSB emphasised that preparers are permitted to use these sources only in the absence of a relevant IFRS Sustainability Standard.

THE ISSB IS PROVIDING A TEMPORARY EXEMPTION FROM THE PROPOSED REQUIREMENT TO DISCLOSE SCOPE 3 GHG EMISSIONS

30 JANUARY 2023

ISSB explains the future of the SASB Standards

View article on sasb.org

Users of the SASB Standards would be aware that SASB was consolidated into the IFRS Foundation in July 2022. The SASB Standards are now guidance materials supporting the development of the IFRS Sustainability Disclosure Standards.

The IFRS Foundation continues to encourage the use of the SASB Standards, and expects them to remain relevant for a couple more years – as it works through the development of replacement standards. In an article on the IFRS Foundation website, Neil Stewart (IFRS Director of Corporate Outreach) explained some important considerations for current SASB reporters:

- The IFRS Sustainability Disclosure Standards will require the consideration of SASB Standards to identify sustainability-related risks, opportunities, and metrics
- The international applicability of the SASB Standards will be improved
- The Illustrative Guidance on IFRS's proposed *General Requirements* standard will be improved to show how a company spanning multiple industries can use the SASB Standards

According to Mr. Stewart: In 2023, companies that already use the SASB Standards should continue to do so and those that are not using them yet should consider adoption. Report preparers that are new to sustainability disclosure should use 2023 to prepare for the future application of the IFRS Sustainability Disclosure Standards.

15 DECEMBER 2022

ISSB provides guidance on Scope 3 emissions reporting

View decision at IFRS Foundation

The ISSB approved a sequence of relief provisions specific to Scope 3 greenhouse gas emissions reporting, which would be required once the ISSB's *IFRS S2 Climate-related Disclosures* standard is confirmed. The relief provisions include:

— A temporary exemption from the proposed requirement to disclose Scope 3 GHG emissions for a minimum of one year after the requirement for other disclosures under *IFRS S2*

— An entity's measurement of Scope 3 GHG emissions can include GHG emissions information for a period that is not aligned with its reporting period when the GHG emission information is obtained from entities in its value chain with a reporting cycle that is not aligned to that of the entity

— Implementation guidance to support an entity in assessing which sustainability-related risks and opportunities in the value chain are relevant to users of general-purpose financial reporting, using Scope 3 GHG emissions as an example

The board also approved an IFRS staff recommendation to introduce a framework for how an entity measures its Scope 3 GHG emissions. Companies would estimate its Scope 3 GHG emissions by prioritising the use of:

— Data based on direct measurement

— Data from specific activities within an entity's value chain

— Timely data that faithfully represents the jurisdiction of, and the technology used for, the value chain activity and its emissions

— Data that has been verified

14 DECEMBER 2022

Sustainability in the context of financial value creation

View release at IFRS Foundation

Since its establishment, the ISSB has weathered criticism that its mandate for investor-focused sustainability reporting would result in companies downplaying (or not disclosing) their wider environmental or social impacts – i.e. external impacts without a "material" link to enterprise value.

At COP15 in Montreal, the ISSB addressed this criticism by offering a description of sustainability in the context of financial value creation and committing to embed this description in its forthcoming IFRS Sustainability Disclosure Standards.

Sustainability will be described in the ISSB's General Sustainability-related Disclosures Standard (IFRS S1) as the ability for a company to sustainably maintain resources and relationships with and manage its dependencies and impacts within its whole business ecosystem over the short, medium and long term. Sustainability is a condition for a company to access over time the resources and relationships needed (such as financial, human, and natural), ensuring their proper preservation, development and regeneration, to achieve its goals.

By referring to this articulation of the value creation process, a company will be better placed to explain to its investors how it is working sustainably within its business ecosystem—addressing the impacts, risks and opportunities that can affect its performance and prospects—to ultimately deliver financial value for investors.

This description addresses the criticism by linking a company's external impacts to its capacity to create value, making it clear that the ISSB does not necessarily consider the materiality of external impacts to be distinct from materiality from an investor perspective. The definition builds on concepts from the Integrated Reporting Framework, which helps companies articulate how they use and effect resources and relationships for creating, preserving and eroding value over time.

/ FEATURE

Resilience & security

/ FEATURE: RESILIENCE AND SECURITY

Applying resilience science to business

The sustainability crisis facing capitalism has led to calls for business to focus on resilience. But what does resilience actually mean?

Today's interest in resilience is linked to a revolution in our understanding of how the world works that started taking root around 50 years ago. In 1973, Canadian ecologist C. S. 'Buzz' Holling published *Resilience and Stability in Ecological Systems*, a seminal work that has been cited more than 21,000 times since (once a day on average for the last 50 years). See Figure 1.

Holling's work spawned the discipline of resilience science, which explains how *human-natural systems* (the interconnected relationship between humans and the natural environment) do not gravitate toward a single predefined equilibrium state but are instead defined by constant change and tipping points.

These human-natural systems (human beings, companies, governments, and the Earth itself are examples of such systems at different scales) have emergent properties that cannot be predicted through the analysis of their components in isolation. The whole really is greater than the sum of its parts – flatly contradicting Adam Smith's prediction that individuals maximising their self-interest would lead to the best interests of society at large (the "invisible hand").

Resilience science has transformed our understanding of how we should manage complex systems ranging from agricultural lands to nation-states and economies. Last year, contemporary resilience scientists wrote on its influence since Holling's 1973 paper:

Resilience science has been successful because Holling and colleagues developed a rich and compelling narrative of system behavior that quite simply describes reality better than previous scientific worldviews of linked systems of human and nature.[1]

If resilience science describes reality better, then calls for business to manage for resilience should be taken as calls for business to manage for reality. But what are these calls for resilience? And hasn't business been managing for reality all along?

In 2017, the Task Force on Climate-related Financial Disclosures (TCFD) released a set of recommendations that asked business to articulate their resilience to climate change. The IFRS Foundation's International Sustainability Standards Board (ISSB) is preparing standards that aim to become the baseline for corporate sustainability reporting worldwide. These standards expand on the TCFD guidance, advising that businesses disclose their resilience to all relevant sustainability-related risks and opportunities.

WE NEED TO ENSURE OUR ASSUMPTIONS EVOLVE WITH OUR UNDERSTANDING OF HOW THE WORLD ACTUALLY WORKS

That said, if business is to adopt resilience science it must unseat a long-standing business paradigm. Taylorism, named after its founder Frederick Winslow Taylor, prioritises efficiency in management.[2] It holds that to achieve maximum efficiency, managers should seek to keep a system stable through standardisation, risk controls, and minimising variation. Taylorism has since worked its way into the fabric of all modern industrial societies, hailed as a cure-all for social problems.[3]

But resilience science has exposed its failures when applied to human-natural systems. These are so persistent that resilience thinkers have coined the term *rigidity trap* to describe how attempts to impose stability on a system in the short term will lead to system rigidity and eventual collapse in the long term. According to Buzz Holling and Lance Gunderson:

Efforts to freeze or restore a static, pristine state, or to establish a fixed condition are inadequate, irrespective of whether the motive is to conserve nature, to exploit a resource for economic gain, to sustain recreation, or to facilitate development. Short-term success of narrow efforts to hold constant can establish a chain of ever more costly surprises.[4]

From a business management perspective, the rigidity trap reflects a mindset problem. It exposes the foibles of assuming an organisation operates in a well-bounded, clearly defined, and linear system where cause and effect is easily discerned. Applying these assumptions in reality can result in "severe ecological, social, and economic repercussions."[5]

From short-term efficiency to long-term resilience

Speaking on the intent of the forthcoming IFRS Sustainability Disclosure Standards, ISSB Chair Emmanuel Faber has expressed that business needs to pivot from short-term efficiency toward long-term resilience.

A Google search for advice on business resilience shows that resilience is often equated with *bouncing back* after a disruption – the faster the bounce-back, the more resilient the business is. But this is only part of the resilience challenge, as it deals with short-term disruption rather than challenging the underlying Taylorist assumption that a business's operating context will return to – and thereafter remain – in a steady state.

To manage for long-term resilience, a business needs to think about more than persisting through disturbance. It also needs to think about "the opportunities that disturbance opens up in terms of recombination of evolved structures and processes, renewal of the system and emergence of new trajectories."[6]

The following steps will help your business put this thinking into practice:

Complete a materiality assessment that identifies your most important dependencies and impacts

Acknowledge that your business exists within a wider human-natural system.

Its capacity to create value depends on social and natural resources and its success depends on managing its stakeholder impacts.

Undertake a scenario analysis that informs both strategy and risk

A scenario analysis should identify a range of plausible future states, such as a low-carbon economy or a Hothouse Earth[7], and explore business strategies to be successful in each future state. Scenario analysis is different to sensitivity analysis (the TCFD also makes this distinction), where a business tests the capacity of its existing strategy to withstand a challenge (such as a carbon price). Many companies have published climate scenario analyses that are actually sensitivity analyses upon closer inspection. It is a nuanced but important distinction for business resilience. Sensitivity analysis imputes the objectives of control and short-term efficiency, with roots in Taylorist thinking. It does not support long-term resilience in the same way that scenario analysis does.

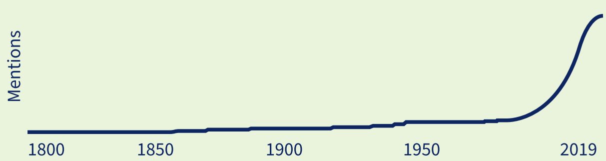
Rethink sustainability reporting as strategic evaluation, not compliance

Arguably the most persistent feature of Taylorism is the assumption that corporate reporting is nothing more than compliance – an inefficient expense to be minimised. Holling himself noted that when systems are assumed to be stable and management aims for efficiency, investment in evaluation and reporting "withered in competition with internal organisational needs."[8] Resilience science has shown that because of the change and uncertainty of human-natural systems, things like public policy and corporate strategy are experiments masquerading as answers.[9] Managing for long-term resilience means acknowledging your strategy is an experiment and investing in reporting as evaluation – leading to a learning organisation that can detect change and evolve over time.

As humans, we need to make assumptions every day as we navigate through real world complexity. Although assumptions are a fact of life, we need to ensure our assumptions evolve with our understanding of how the world actually works. We used to think that the world was flat and that the Sun revolved around the Earth.

Recognising those errors of deduction set the stage for cognitive revolutions that supported future prosperity. Resilience science has similarly woken us up to the reality that humans and the businesses we create have never been separate from the world around us. Ensuring our future prosperity means managing our businesses accordingly.

Figure 1: Use over time for 'resilience'



/ WORDS BY
Dr. Alex Gold
CEO, BWD Strategic (North America)

/ FEATURE: RESILIENCE AND SECURITY

2023-2030 Australian Cyber Security Strategy: Leading the Charge

Australia is in the midst of a cybersecurity revolution. On 8 December 2022, the Minister for Cyber Security, the Hon. Clare O'Neil MP, announced the development of the 2023-2030 Australian Cyber Security Strategy (the Strategy).

The Minister appointed an Expert Advisory Board (chaired by Telstra's former CEO, Andrew Penn) to advise on the development of the Strategy, and on 27 February 2023, the Expert Advisory Board released a discussion paper (the Discussion Paper), inviting the public to make submissions on how Government can achieve its vision of making Australia the most cyber secure nation by 2030. Both the Strategy and the Discussion Paper reinforce the notion that Australia is leading the charge in cyber security enhancement, a fact which has received international recognition from the MIT Technology Review *Cyber Defence Index* (the Review) which ranked Australia in the world in showing the greatest progress and commitment to enhancing cyber security.

BACKGROUND: Cybersecurity Challenges Faced by the Government in Responding to Data Breaches

The release of the Discussion Paper comes in the wake of two of the most significant data breaches in Australian history; the Optus and Medibank hacks. Over a three-week period in 2022, the personal data of over 9.8 million Optus customers and 9.7 million Medibank customers was stolen by cyber criminals. In light of these breaches, the Discussion Paper makes clear that government was ill-equipped to respond, and did not have the appropriate frameworks and powers to enable an effective national response given the number of Australians whose personal information, including identity data, was compromised.

In light of these incidents, the Government aims to overhaul a $1.7 billion cyber security plan set up by the former Government. In addition to the release of the Discussion Paper, Prime Minister Anthony Albanese held a cyber security roundtable with leaders from the public service and Australian intelligence agencies, as well as independent experts from business, industry and civil society, to discuss best practice cyber behaviours, growing Australia's cyber security sector and raising national cyber awareness. As part of these discussions, Hon. Clare O'Neil MP made clear that it was the Government's aim to work with industry to build a nationally consistent cyber security framework. The Government has also announced that it will be appointing a National Coordinator for Cyber Security to "ensure a centrally coordinated approach" to the government's cyber security responsibilities.

ADDRESSING CYBER SECURITY GAPS: Proposed reform in Australia

The Discussion Paper itself does not outline any reform that is going to take place in the cyber security landscape, instead posing a number of questions regarding the state of cyber security and inviting industry to submit responses to those questions. The Discussion Paper highlights that the Strategy will form the foundation of an evolving approach to cyber security into the future, and that implementation will require strong governance and a transparent, meaningful evaluation framework to ensure that the Strategy is fit-for-purpose now and into the future. It outlines that the Strategy will be developed in partnership with industry academia, state and territory governments and the Australian and international community. The Minister for Home Affairs and Cyber Security and the Expert Advisory Board are also being advised on global best practice by a Global Advisory Panel comprising the best minds from Australia's closest allies. The Global Advisory Panel is chaired by Ciaran Martin CB, former CEO of the United Kingdom's National Cyber Security Centre.

The Discussion Paper acknowledges that are a range of implicit cyber security obligations placed on Australian businesses and nongovernment entities, including through the corporations, consumer, critical infrastructure, and privacy legislative and regulatory frameworks. It outlines that due to the severity of major cyber incidents, that more explicit specification of obligations, including some form of best practice cyber security standards, is required across the industry to increase our national cyber resilience and keep Australians and their data safe.

FIGURE 1
Current Cyber Incident Reporting Requirements

CPS 230 - op risk incident	**Operational risk incident** that is determined to be **likely to have a material financial impact or a material impact on the ability of the entity to maintain its critical operations.**	72 hours
CPS 234 - info security incident	An **information security incident** that: a) materially affected, financially or non-financially, the entity or the interests of depositors, policyholders, beneficiaries or other customers; or b) has been notified to other regulators, either in Australia or other jurisdictions.	72 hours
CSP 234 - security control weakness	Material information security control weakness which the entity expects it will not be able to remediate in a timely manner.	10 business days
SOCI - critical incidents	**Critical** cyber incidents: a) a cyber security incident has occurred or is occuring; and b) the incident has had, or is having, a **significant** impact on the **availability of the asset**	12 hours (oral) 84 hours (written)
SOCI - other incidents	Other cyber incidents: a) a cyber security incident has occurred, is occuring **or is imminent**; and b) the incident has had, is having, or is likely to have, **a relevant impact on the asset** An incident will be considered to have a 'relevant impact' if it impacts on the availability, integrity, reliability or confidentiality of the asset.	72 hours (oral) 48 hours (written)
Privacy Act - eligible data breach	'Eligible data breach': a) unauthorised access or disclosure of personal information, or loss of personal information; and b) reasonably likely to result in serious harm to any of the individuals to whom the information relates.	As soon as practicable from awareness 30 day-assessment period from suspicion
ASX Rules - continuous disclosure	Once an entity becomes aware of **any information** concerning it that a reasonable person would expect to have a **material effect on the price or value of the entity's securities**, it must tell ASX that information	Immediately

IN LIGHT OF THESE BREACHES, THE DISCUSSION PAPER MAKES CLEAR THAT GOVERNMENT WAS ILL-EQUIPPED TO RESPOND, AND DID NOT HAVE THE APPROPRIATE FRAMEWORKS AND POWERS TO ENABLE AN EFFECTIVE NATIONAL RESPONSE.

While it does not provide an example of what these express obligations may look like, it does posit invite industry to comment on the potential consideration of a new *Cyber Security Act*, which would draw together cyber-specific legislative obligations and standards across industry and government.

It also highlights that there may also be opportunities to simplify and streamline existing regulatory frameworks. For example, stakeholders have encouraged government to streamline reporting obligations and response requirements following a major cyber incident. This would be a welcome reform considering the current state of reporting obligations strewn across multiple pieces of legislation and industry standards.

The Discussion Paper also ask submitters to consider whether further developments to the *Security of Critical Infrastructure Act 2018* (Cth) (SOCI Act) are warranted, such as including customer data and 'systems' in the definition of critical assets to ensure the powers afforded to government under the SOCI Act extend to major data breaches such as those experienced by Medibank and Optus, not just operational disruptions.

2023-2030 Australian Cyber Security Strategy: Leading the Charge (continued)

Under the SOCI Act, the Government has 'last resort' powers to respond to a serious cyber security incident relating to critical infrastructure assets in critical infrastructure sectors. If customer data and 'systems' were added to the definition of critical assets under the SOCI Act, this would effectively grant the Minister the power to:

- Give directions to a specified entity for the purposes of information gathering in respect of a cyber security incident;
- Give directions to a specified entity requiring the entity to take certain actions or do certain things in response to a cyber security incident; and
- Request an authorised government agency to provide assistance in responding to a cyber security incident.

Were this change in place at the time of the Medibank or Optus breach, the Government would have had the power to effectively direct the cyber incident response of those businesses if it so chose. While the SOCI Act already does contain Government 'step in' rights in the wake of a serious cyber incident, Minister O'Neil has suggested those powers are currently too limited and "very, very narrowly defined" and did not assist the Government practically. However, the definition of 'asset' under the SOCI Act is already very broad (including a system, a device, a computer program, data and "any other thing"), raising the question of what effect an expansion of the definition of asset would practically have.

The Discussion Paper puts forward this proposal with the aim of clarifying what the community and victims of a cyber-attack can expect from the Government following an incident. It makes clear that Government must ensure that frameworks for incident management and coordination are fit-for purpose, and that Government should conduct post-incident review and consequence management following major cyber incidents. Additionally, it posits that Government should share the root cause findings from investigations of major cyber incidents so that everyone can benefit from these learnings. Shortly after the release of the Discussion Paper, MIT Technology Review released the Review. The Review is the first annual comparative ranking of the world's 20 largest and most digitally forward economies (excluding Russia and including Poland) on their preparation against, and response and recovery from, cybersecurity threat. The Review assessed countries on the basis of four categories:

- Critical infrastructure – whether a country has a robust and secure digital and telecommunications networks and computing resources that underpin primary economic activity;
- Cyber security resources – a country's technological and legal enforcement for cybersecurity assets;
- Organisational capacity – a country's cybersecurity maturity and digital experience of businesses and other institutions; and
- Policy commitment – a measurement of government effectiveness and quality of cybersecurity regulation, and the robustness and completeness of regulation, to gauge regulatory efforts promoting resilient cybersecurity practices.

The Review found that Australia was first in the world among countries showing the greatest progress and commitment to enhancing cyber security. It ranked Australia first in 3 of 4 assessment criteria – critical infrastructure, organisational capacity and policy commitment. The Review also highlighted that Australian business leaders have high confidence in the Government's cyber security stance, a trait which is likely being bolstered by the Government's continued interaction with business through things like the cyber security roundtable and the Discussion Paper.

Australia's commitment to cyber security reform

Australia is taking numerous steps to reform its' cyber security landscape. The recently released Discussion raises a number of interesting points for consideration, and invites collaboration from the industry to help shape Australia's next steps forward. The Australian Government has made clear that it wants to be at the forefront of leading Australia's cyber security reform, working with business to create a nationally cohesive cyber security framework. This has garnered international attention and praise, with MIT ranking Australia as the number one country showing the greatest progress and commitment to enhancing cyber security. It will be interesting to see what steps the Australian Government takes next in its goal of making Australian the most cyber secure nation by 2030.

/ WORDS BY
Michael Caplan and Astan Ure
Gilbert + Tobin

/ FEATURE: RESILIENCE AND SECURITY

Sustainability reporting trends for 2023

Corporate sustainability reporting has come a long way in recent years. Investor and regulatory pressures have consolidated the reporting landscape and helped clarify best practice.

Investor and regulatory expectations are higher. Reporting knowledge has become increasingly specialised, and it can be difficult for practitioners to serve the growing needs of a variety of stakeholders.

This article outlines five key sustainability reporting trends for 2023. It explains why they matter, and provides examples to help sustainability professionals improve their current strategies.

FIGURE 1
How double materiality works

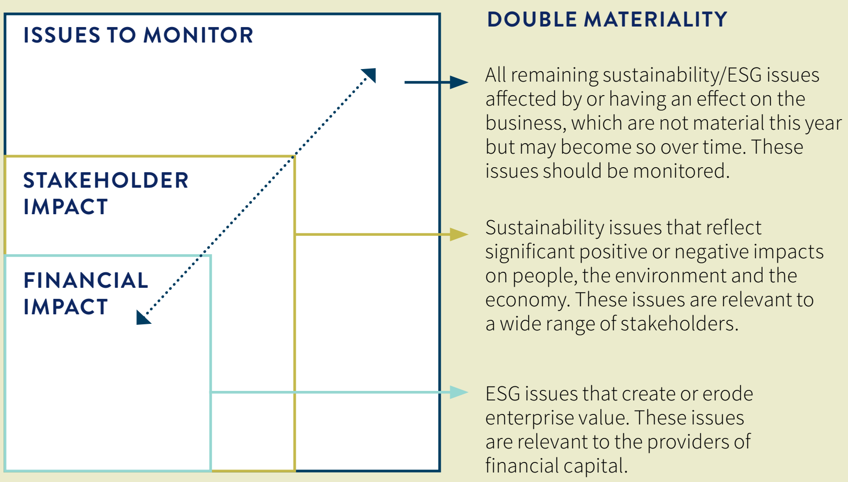
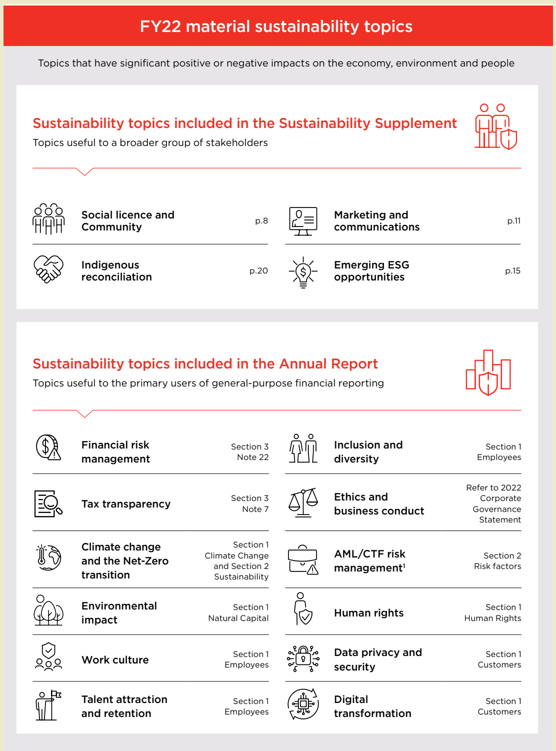


FIGURE 2
Best practice example: Westpac Integrated Report 2022


FY22 material sustainability topics

Topics that have significant positive or negative impacts on the economy, environment and people

Sustainability topics included in the Sustainability Supplement
Topics useful to a broader group of stakeholders

Social licence and Community	p.8	Marketing and communications	p.11
Indigenous reconciliation	p.20	Emerging ESG opportunities	p.15

Sustainability topics included in the Annual Report
Topics useful to the primary users of general-purpose financial reporting

Financial risk management	Section 3 Note 22	Inclusion and diversity	Section 1 Employees
Tax transparency	Section 3 Note 7	Ethics and business conduct	Refer to 2022 Corporate Governance Statement
Climate change and the Net-Zero transition	Section 1 Climate Change and Section 2 Sustainability	AML/CTF risk management[1]	Section 2 Risk factors
Environmental impact	Section 1 Natural Capital	Human rights	Section 1 Human Rights
Work culture	Section 1 Employees	Data privacy and security	Section 1 Customers
Talent attraction and retention	Section 1 Employees	Digital transformation	Section 1 Customers

Clear delineation between impact and financial materiality.

Simple design and ease of navigation adds to effectiveness of corporate communication.

1 Double materiality

The concept of double materiality has emerged from financial reporting, where auditors use their professional judgment to decide whether an omission or misstatement of information is likely to *significantly influence* the decision of a reasonable investor. Double materiality therefore involves the consideration of traditional ESG matters as well as financial impacts. A double materiality assessment is the foundation of best practice sustainability strategy and reporting in 2023.

Sustainability reporting trends for 2023 (continued)

2 Greenwashing

The audience for sustainability reporting is wider and better-informed than ever before. Regulators, investors and customers are demanding richer, more sophisticated information on a company's ESG risks and opportunities. Audiences, especially regulators, will no longer tolerate anything that whiffs of greenwashing. Key regulators like the SEC and ASIC have identified greenwashing as a top priority for 2023. The most scrutinised forms of greenwashing include:

— **Evidence-free ESG reporting:** Greenwashers use spin as a proxy for real ESG strategy and progress against it. Look for vague, jargony, clichéd or overly promotional language, a lack of evidence-based metrics and targets, and failure to align with best practice standards (ISSB, GRI).

— **Dubious net zero targets:** Underwhelming net zero pledging brings increased legal and regulatory risk in 2023. A high-quality net zero strategy should include scope 3 targets (covering scope 1 and 2 only is a form of greenwashing), the avoidance of offsetting where possible, an ambitious roadmap over the short (2030), medium (2040) and long (2050) term, and alignment with the Science-Based Targets initiative.

3 New disclosure standards

In 2021, the International Financial Reporting Standards (IFRS) announced the formation of the International Sustainability Standards Board (ISSB) in response to a push for consolidated reporting standards from institutional investors and regulators, especially in relation to climate change. As a result, we now have a high-quality, comprehensive global baseline of sustainability disclosures for investors and financial markets. The IFRS's Sustainability Disclosure Standards will be finalised in June 2023, with companies beginning to issue disclosures against the standards in 2025.

The new IFRS standards demand that companies focus on ESG issues that matter to financial performance, rather than on PR-driven sustainability commitments unrelated to purpose and strategy.

Nature is also emerging (alongside climate) as a priority area for ESG disclosure. The Taskforce on Nature-Related Financial Disclosures — which helps companies integrate nature into decision-making — will be released in September 2023.

FIGURE 3
An overview of how reporting guidance has consolidated

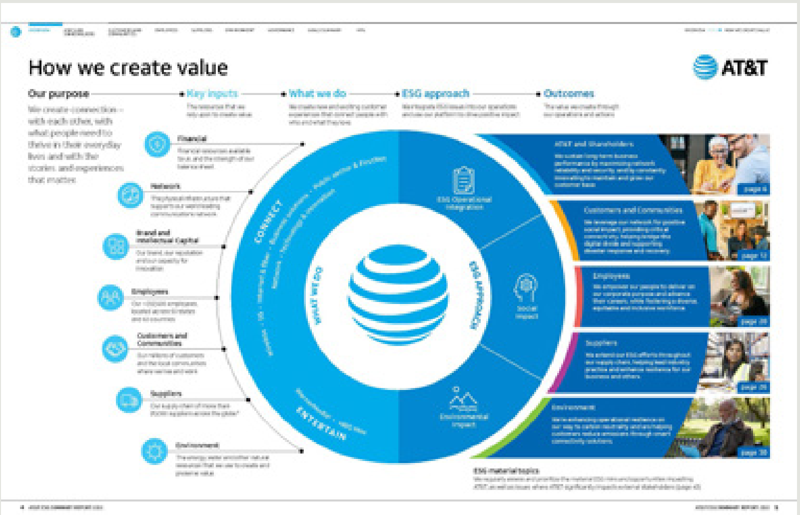
4 Value creation

A value creation model reveals how your structures, systems and relationships create value and positive impact for all stakeholders, not just shareholders alone. It aligns your ESG narrative with your overarching corporate strategy by showing how your vision, values, strategic priorities, material topics, and governance fit together.

An understanding of the different ways a business creates value for its stakeholders is crucial to aligning ESG strategy with enterprise strategy.

FIGURE 5

Best practice example: AT&T



5 Integrated reporting

The trends outlined above coalesce to produce a best practice integrated reporting suite. Integrated reporting is the best way to show investors and others how your ESG strategy supports organisational resilience and financial value creation, and has multiple benefits.

In addition to explaining how the business creates value for stakeholders, integrated reporting reduces duplication in reporting efforts, helps break down internal silos, enhances ESG ratings and credibility, and meets the disclosure needs of investors and regulators.

FIGURE 6

What does best practice sustainability reporting look like now?

MULTIPLE STAKEHOLDERS

Stakeholder impact reporting (Sustainability Report)

Reporting on ESG issues that reflect significant positive or negative impacts on people, the environment and the economy (impact materiality).

INVESTOR FOCUS

Integrated reporting (Front section of Annual Report)

An integrated report includes ESG issues that may create or erode enterprise value in the short, medium, and long term (financial materiality).

Financial statements (Bulk of Annual Report)

Reporting on revenues, expenses, cash flow, balance sheet over a prescribed period.

/ WORDS BY
Luke Heilbuth
CEO, BWD Strategic

/ FEATURE: RESILIENCE AND SECURITY

Climate change and decarbonisation

Safeguard Mechanism reform

The National Greenhouse and Energy Reporting (NGER) Act Safeguard Mechanism (Safeguard Mechanism) is Australia's primary instrument for controlling carbon emissions from large emitters, by setting emissions limits (or 'baselines'), which covered facilities must either emit below or purchase carbon credits to offset any exceedance of that limit.

In April 2023 the *Safeguard Mechanism (Crediting) Amendment Act 2023* (Act) was registered. The principal function of the Act is to amend the *National Greenhouse and Energy Reporting Act 2007* (Cth) (NGER Act) and the *Australian National Registry of Emissions Units Act 2011* (Cth) to establish a framework for creating Safeguard Mechanism Credits (SMCs), including how SMCs will be issued, transferred and surrendered in the Australian National Registry of Emissions Units (ANREU).

Significantly, the Act expands the objects of the NGER Act to include the objects of ensuring that a number of 'safeguard outcomes' are achieved, including:

— Total emissions of covered facilities between 1 July 2020 and 30 June 2030 do not exceed a total of 1,233 million tonnes of carbon dioxide equivalence (referred to as an overall 'cap' on the emissions of covered facilities);

— Net safeguard emissions decline to no more than 100 million tonnes of carbon dioxide equivalence for the financial year beginning on 1 July 2029; and decline to zero for any financial year to begin after 30 June 2049 (i.e. achieving net zero by 2050); and

— The 5 year rolling average safeguard emissions for each financial year after 30 June 2024 are lower than the past 5 year rolling average safeguard emissions for that financial year.

In essence, these amendments to the NGER Act enshrine in legislation the policy that the Government set out in its Safeguard Mechanism Reforms Position Paper earlier this year[10], which is that covered facilities contribute to a proportional share (estimated at around 28%) of achieving Australia's national greenhouse gas emissions reduction targets for 2030, and that the reforms put covered facilities on a broad trajectory to net zero emissions by 2050.

Further key amendments introduced by the Act have:

— Expanded the role of the Climate Change Authority (CCA) when advising the Climate Minister on the 'annual climate change statement' to include advising about whether safeguard emissions are declining consistently with the new emissions reduction objects in the NGER Act; and

— Increased the transparency of emissions and offsets use, at both a scheme level and facility level.

In May 2023 the Federal Government registered a set of final legislative rules setting out the detailed design elements of the Safeguard Mechanism reforms. For example, the detailed rules set out approaches to baseline setting, baseline decline rates, and special treatment for trade-exposed facilities. More info: https://www.gtlaw.com.au/knowledge/final-safeguard-mechanism-design-released

The reformed Safeguard Mechanism scheme will take effect on 1 July 2023. Covered facilities should monitor closely for the release of accompanying legislative instruments to the Act, which will implement the key design elements of the reforms, including the annual baseline decline rate for covered facilities, and treatment of new and trade-exposed facilities. As 1 July looms closer, covered facilities should consider strategies for generating and / or purchasing SMCs for compliance use, and assess opportunities for decarbonisation at their facilities. Facilities may also wish to consider the potential to pass through costs associated with Safeguard Mechanism compliance to their customers.

Review of the integrity of Australian Carbon Credit Units

On 1 July 2022, Minister Bowen announced an independent review into the integrity of ACCUs and Australia's carbon crediting framework (Chubb Review), to be led by former Chief Scientist Professor Ian Chubb.

Integrity of the Australian Carbon Credit Unit (ACCU) scheme has faced particular attention, after the release of a series of academic papers scrutinising the integrity of particular methods used in generating ACCUs. This scrutiny, along with concerns about the decision of the Clean Energy Regulator (CER) to facilitate the exit by project proponents of their fixed delivery carbon abatement contracts with the Commonwealth, has led to much market uncertainty. It had been hoped that the Chubb Review will provide a basis for restoring confidence in the Australian carbon market.

The Chubb Review report was released on 9 January 2023. The report found Australia's carbon crediting framework was sound and abatement from projects under the ACCU scheme were not overstated. Some improvements to the ACCC scheme were recommended[11]. The key recommendation from the Chubb review included improvements in the scheme's governance, particularly around transparency to enhance confidence in the integrity and effectiveness of the ACCU scheme. The Chubb Review outlined how these improvements would likely increase the appetite of investors to inject private capital in the ACCU scheme.

Identified areas of potential improvement included a clarification of the CER's role in the ACCU scheme, in addition to separating the responsibilities that it currently shares with the Emissions Reduction Assurance Committee (ERAC).[12] Furthermore, the independence of the ERAC as the assuror of the scheme was challenged in general, as it currently sits within the CER which is the administrator and regulator of the ACCU Scheme's methodologies.

As such, re-establishing a fully independent assurer of the ACCU scheme was seen as a matter of urgency under Chubb's findings. Additionally, the report found that decision making around the trading of ACCUs by the government themselves should be shifted to a department that is separate from the CER, once again to mitigate any potential conflict.

The Chubb Review also found the current restrictions on data sharing go beyond what is necessary to protect the commercial confidence of the scheme. A loosening of these restrictions to increase transparency would have the desired effect of increasing confidence in the legitimacy of the ACCU Scheme. Furthermore, consolidating any relevant information into a single national database would increase accessibility and ease of distribution in comparison to the somewhat fragmented approach currently.

THE KEY RECOMMENDATION FROM THE CHUBB REVIEW INCLUDED IMPROVEMENTS IN THE SCHEME'S GOVERNANCE, PARTICULARLY AROUND TRANSPARENCY TO ENHANCE CONFIDENCE IN THE INTEGRITY AND EFFECTIVENESS OF THE PROGRAM.

The report also outlined the important role First Nations Australians play in the scheme, particularly in ensuring consultation on projects which could occur on Native Title Lands. Increasing the regulation and accreditation of carbon market advisors and service providers beyond the current voluntary adherence to codes of conduct, was also a notable recommendation.

The Federal Government released an official response stating it accepts all of the recommendations of the Chubb Review in principle. It will now work with stakeholders on the implementation of recommendations, including any associated legislative amendments.[13]

Pathways to Industrial Decarbonisation Report released

The Australian Industry Energy Transitions Initiative (AIETI) has spent the past three years undertaking a program to both explore and address challenges that are associated with decarbonising the emissions intensive industry sector.

In doing so it has focused on five key industrial supply chains: aluminium, iron and steel, other metals (including copper, nickel, zinc, and lithium), chemicals (including ammonia, fertilisers and commercial explosives), and liquified natural gas. As a result of undertaking this process, the AIETI has identified potential pathways to net zero emissions across heavy industry supply chains in the Pathways to Industrial Decarbonisation Phase 3 Report (Report) which was published in February 2023 by the AIETI.[14]

The Report discusses how to facilitate the transition of industry supply chains to net zero emissions to contribute to global emissions reductions in line with the Paris Agreement goals. As the five key industry supply chains collectively make up 17.3% of Australia's GDP, the Report also heavily focuses on maintaining the economic prosperity of these key sectors during the decarbonisation process. These industries have unique challenges and opportunities in relation to decarbonisation and as such each is individually analysed in detail throughout the Report.

The Report analyses three scenarios that explore potential emissions reductions pathways in Australia:

— 'Incremental scenario': a scenario that fails to limit warming to below 2ºC and does not meet government targets;
— 'Industry-led scenario' – a scenario that represents strong climate action from industry, with less climate action across the broader economy; and
— 'Coordinated action scenario' – a scenario with the level of action and ambition needed to meet the emissions reduction goals of the Paris Agreement and realise decarbonisation opportunities.

Climate change and decarbonisation (continued)

The 'Coordinated action scenario', in order to be implemented, would require significant steps to be taken. This scenario includes ambitious efforts to use renewable energy and green hydrogen and it requires investments in energy systems that are substantial. This scenario will require, amongst other things:

— Doubling the current electricity generation capacity to 600TWh/year by 2050 – with the more ambitious target of 1450TWh/year needed to establish new green iron and hydrogen export markets;

— At least $440 billion of investment by 2050 for energy system investment, including generation, transmission, and storage technologies (a 12% increase in business as usual expenditure); and

— Total renewables generation capacity of 260GW by 2050, shared between wind, largescale solar PV, rooftop solar and storage capacity; and

— At least $190 billion of investment by 2050 for industry technologies, electrification and energy efficiency (a 81% increase in business as usual expenditure).

Energy Ministers set out 2023 priorities

The Energy and Climate Change Ministerial Council (ECMC) is a forum for the Commonwealth, Australian states and territories, and New Zealand to work collaboratively on key reforms in the climate change and energy sectors as well as issues of national significance.

The ECMC met in February 2023 to set out its priorities for the subsequent 12 months. The following five strategic priorities in relation to energy and climate issues were agreed on:

— Transforming Australia's energy system to align with net zero emissions goals whilst also providing reliable and affordable energy to Australians, with a key focus on regulating and delivering projects that involve renewable energy;

— Effectively and efficiently facilitating Australia's emissions reduction targets;

— Strengthening investment in adaptation and resilience to climate change;

— Engaging with all Australians on the decarbonisation process, with a focus on First Nations peoples and regional Australians; and

— Providing a coordinated and strategic approach to improving energy productivity across the economy.[15]

The ECMC proposed the following initiatives and regulatory changes which will be the tools used to help facilitate the above five priorities:

— Including an emissions reduction goal in the National Energy Objectives, which will bind Australia's energy bodies to consider climate change policies in decision making;

— Expediting the expansion of the Australian Energy Regulator's gas and electricity market monitoring powers;

— Developing the Congestion Relief Market, which will be a voluntary market that will allow generators, load and storage to trade congestion relief;

— Commissioning a Commonwealth review of the National Hydrogen Strategy to ensure that the strategy is leading Australia on a path to be a global hydrogen leader by 2030;

— Updating to the National Electric Vehicle Strategy, including infrastructure, standards, and education initiatives;

— Assisting in the development of a National Climate Risk Assessment to monitor national climate policies;

— Establishing working groups for decarbonisation and offshore wind energy;

— Engaging with stakeholders on competition and consumer issues relating to energy reform; and

— Providing an update on the National Energy Performance Strategy which seeks to improve energy performance.[16]

THE 'COORDINATED ACTION SCENARIO' INCLUDES AMBITIOUS EFFORTS TO USE RENEWABLE ENERGY AND GREEN HYDROGEN AND IT REQUIRES INVESTMENTS IN ENERGY SYSTEMS THAT ARE SUBSTANTIAL.

THE COMMISSION HAS ANNOUNCED THAT MULTIPLE REGULATORY CHANGES WILL BE PROPOSED, SUCH AS A NET-ZERO INDUSTRY ACT WHICH WOULD INTRODUCE A SIMPLIFIED REGULATORY FRAMEWORK FOR THE PRODUCTION OF 'NET ZERO' PRODUCTS.

European Union Industrial Plan

On 1 February 2023, the European Commission (Commission) released its communication on a 'Green Deal Industrial Plan for the Net-Zero Age' (Communication).[17]

The Communication details the actions the Commission intends to take in order to stimulate investment in the 'net-zero industry'. For example, the Commission has announced that multiple regulatory changes will be proposed, such as a Net-Zero Industry Act which would introduce a simplified regulatory framework for the production of 'net zero' products including windmills and carbon capture and storage technologies.

The Communication also provides that the Commission is assessing how EU funding for net zero technologies can be increased. The Commission has proposed that it will amend the EU state aid rules in order to increase funding for net zero technologies.

It is also proposed that a European Sovereignty Fund be created, which would aim to preserve "a European edge on critical and emerging technologies, from computing-related technologies, including microelectronics, quantum computing, and artificial intelligence to biotechnology and biomanufacturing and clean technologies".[18] This funding would be in addition to other EU funding that is already available for net zero technologies, including guarantees under the InvestEU Programme which is a program that supports sustainable investment, innovation and job creation in the EU.[19]

Further, the Communication also mentions private funding is needed for the energy transition, and that private funding will need to be a significant source of funding.

The Communication also provides the outline of the Green Deal Industrial Plan (Plan), which will be based on the following four pillars:

1. A predictable and simplified regulatory environment;
2. Faster access to finance;
3. Enhancing skills; and
4. Open trade for resilient supply chains.

The measures proposed in the Communication are intended to make the EU an attractive market for investors in net zero technologies and the energy transition more broadly. Many commentators view this as a direct response to the approach being taken in the US through the Inflation Reduction Act.

The combined approach of the EU and US to incentivizing energy transition, could potentially reduce investment in Australia for decarbonisation. However, Australia could benefit from this development. Firstly, Australia may propose similar measures in the future in order to attract more investment in the energy transition space to Australia. Additionally, due to the likely increase in demand for green energy, countries such as Australia that are rich in metals like copper, nickel and lithium will have increased demand for such commodities.

Climate change and decarbonisation (continued)

EU Emissions Trading System reforms, the Carbon Border Adjustment Mechanism and the Social Climate Fund adopted by the European Parliament

In April 2023, the EU Parliament gave its approval for three crucial pieces of legislation which form part of the "Fit for 55 in 2030 package", which is the EU's plan to reduce GHG emissions by at least 55% by 2030 compared to 1990 levels in line with the European Climate Law. The legislation approved concerns the EU Emissions Trading System (ETS), the Carbon Border Adjustment Mechanism (CBAM) and the Social Climate Fund (SCF). The legislation for each of the reforms detailed below must be formally endorsed by Council before the legislation is published in the EU Official Journal. After publication, the legislation will enter into force 20 days later.[20]

The ETS lowers the cap on the emissions for specific economic sectors in the EU each year and establishes a financial cost for carbon. The ETS reform increases the ambition of the ETS by setting a new goal of reducing GHG emissions by 62% by 2030 compared to 2005 levels in the ETS sectors. Additionally, the reform will gradually phase out free allowances to industries in the ETS between 2026 and 2034. Further, to address the lack of emissions reductions in road transport and buildings, a new ETS II for fuel for road transport and buildings, will be set up which will put a price on GHG emissions from these sectors starting in 2027 (or in 2028 if energy prices are exceptionally high).[21] The more challenging emissions reduction target will potentially increase funding in low-emission technology, especially as ETS allowance prices increase.

Adoption of more stringent standards in the EU will set best practice which will become a benchmark for investors in the EU and overseas.

The legislation will phase in the CBAM, which will impose a carbon charge on a range of imported goods (such as iron, steel, cement, aluminium, fertilisers, electricity and hydrogen) to prevent 'carbon leakage' and to maintain the momentum of EU climate efforts. Specifically, importers will be required to pay any price difference between the carbon price paid in the production country and the cost of carbon allowances in the EU ETS.

THE ETS REFORM INCREASES THE AMBITION OF THE ETS BY SETTING A NEW GOAL OF REDUCING GHG EMISSIONS BY 62% BY 2030

The CBAM will contribute to a reduction in global emissions, rather than the increased climate ambition in the EU resulting in the transfer of carbon-intensive manufacturing outside the EU. Moreover, it intends to motivate industries beyond the EU to adopt similar measures towards carbon neutrality. The CBAM will be introduced gradually between 2026 and 2034, concurrently with the phasing out of free allowances in the EU ETS.[22] This could impact Australian companies that import from the EU, as costs could increase due to EU companies needing increase their prices to cover compliance costs.

Under the reforms the SCF will be established, which seeks to ensure fairness and social inclusivity in the climate transition. The SCF will be set up to benefit vulnerable households, transport users and micro-enterprises that are particularly affected by transport and energy poverty. The SCF will start in 2026, one year before the ETS II is operational, which will cover buildings and road transport. In the first instance, the SCF will be financed through funding obtained from auctioning 50 million ETS allowances (which is estimated to be worth approximately €4 billion). Once the ETS II is operational, the SCF will be funded from auctioning ETS II allowances up to an amount of €65 billion, with an additional 25% covered by national resources (amounting to approximately €86,7 billion in total).[23]

US Environmental Protection Agency proposes 'strongest-ever pollution standards' for cars and trucks to expedite the transition to clean energy

In April 2023, the US Environmental Protection Agency (US EPA) announced two sets of proposed performance-based standards that will accelerate the transition to a future with more clean vehicles and in turn assist in tackling the climate crisis.[24] The first set of proposed standards, the Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium Duty Vehicles (Light and Medium Duty Vehicle Proposed Standards), builds on the US EPA's existing emissions standards for light trucks and passenger cars for model years 2023 through 2026. The Light and Medium Duty Vehicle Proposed Standards incorporate advances in clean car technology to further reduce climate pollution and smog and soot-forming emissions. The Light and Medium Duty Vehicle Proposed Standards are designed to allow manufacturers to meet performance-based standards that work best for their fleets and could result in widespread use of filters to reduce gasoline particulate matter emissions and accelerate the transition to electric vehicles. The US EPA projects that electric vehicles could account for 67% of new light-duty vehicle sales and 46% of new medium-duty vehicle sales in model year 2032.[25]

The second set of proposed standards, the Greenhouse Gas Standards for Heavy-Duty Vehicles - Phase 3 (Heavy-Duty Vehicle Proposed Standards) will apply to heavy-duty vocational vehicles (such as delivery trucks, school buses, and freight-hauling trucks). The Heavy-Duty Vehicle Proposed Standards will complement existing criteria pollutant standards for model year 2027 and beyond heavy-duty vehicles and represent the third phase of the US EPA's Clean Trucks Plan. The Heavy-Duty Vehicle Proposed Standards use performance-based standards that enable manufacturers to achieve compliance efficiently based on the composition of their fleets.[26]

The proposed standards aim to enhance the air quality in communities throughout the US, which will in turn provide health benefits to those in the US, particularly those who are disproportionately exposed to vehicle pollution and heavy-duty activity. The combined impact of these proposed standards is estimated to prevent almost 10 billion tonnes of CO2 emissions.

Additionally, these proposed standards would diminish oil imports by approximately 20 billion barrels. According to the US EPA, the suggested standards are anticipated to yield benefits that exceed the costs by at least US$1 trillion.[27] Similar standards could be proposed in Australia in the future. To keep ahead of such developments, Australian businesses can start updating their vehicle fleets to include electric vehicles.

THE US EPA PROJECTS THAT ELECTRIC VEHICLES COULD ACCOUNT FOR 67% OF NEW LIGHT-DUTY VEHICLE SALES AND 46% OF NEW MEDIUM-DUTY VEHICLE SALES IN MODEL YEAR 2032

/ WORDS BY

Ilona Millar and Ashleigh McCoach
Gilbert + Tobin

Nature-related disclosure

TNFD: An overview

On 28 March 2023, the Taskforce on Nature-related Financial Disclosures (TNFD) released the fourth and final draft framework for nature-related risk management and disclosure (V0.4).

The framework helps businesses identify dependencies and impacts on nature in order to assess nature-related risks and opportunities and disclose them to stakeholders.

The V0.4 beta framework is the final draft ahead of the TNFD's release in September 2023. V0.4 provides further guidance on using the LEAP approach (see right) to identify priority locations, assess their nature-related dependencies, impacts, risks, and opportunities, and determine which should be disclosed.

V0.4 further refines the disclosures outlined in previous drafts and more closely aligns them to the Taskforce on Climate-related Financial Disclosures' (TCFD) approach. V0.4 also introduces draft indicators and metrics with core global, sector-specific, and risk and opportunity metrics. Additional industry sector and biome guidance has been included, with more to come, to assist businesses in identifying and disclosing nature-related information.

Some businesses have started using the TNFD during the beta framework's pilot, showing how it can be applied and, in some cases, integrated with climate reporting. The TNFD will inform any future reporting standard for nature specifically developed by the International Sustainability Standards Board (ISSB).

Businesses and financial institutions should focus on getting their LEAP approach right as a first step in building a nature-positive business model. V.04 provides a good overview here.

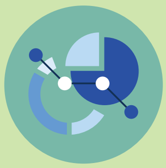
/ WORDS BY
Susan Dyster
Senior Strategy Manager, BWD Strategic

LEAP: The starting point for building a nature-positive business model

Both the TNFD and the European Sustainability Reporting Standards on Biodiversity and Ecosystems (E4) are premised on a risk assessment approach called LEAP:

Locate where your business interfaces with nature

Evaluate your nature-related dependencies and impacts



Assess your nature-related material risks and opportunities

Prepare to respond and report

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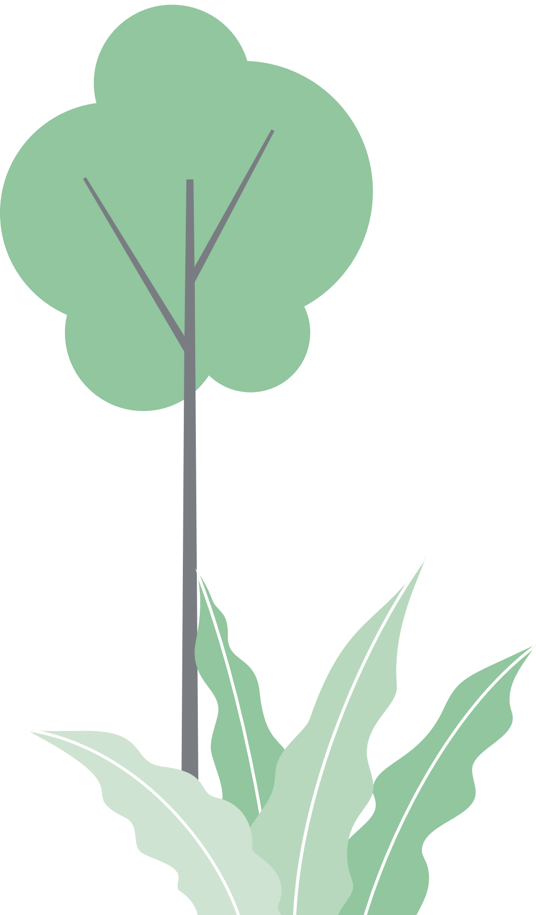
/ NATURE-BUSINESS RELATIONSHIPS

The value of nature

What would the naturalist US President, Teddy Roosevelt, make of the business-nature relationship in 2023?



Theodore 'Teddy' Roosevelt was an awkward speaker. The twenty-sixth American president struggled with a speech impediment and often gesticulated wildly, his voice rising to a high-pitched whine as he thumped a point home. Most Americans loved him anyway. He'd fought for them against the power of the robber barons, giving workers new rights and fair pay. Many thought his passion for nature odd. But he'd earned the right to convince them otherwise.

On a spring day in 1903, Roosevelt stood before a crowd in Arizona's Grand Canyon. Looking over the expanse, he made this plea:

"I want to ask you to keep this great wonder of nature as it now is. I hope you will not have a building of any kind, not a summer cottage, a hotel or anything else, to mar the wonderful grandeur, the sublimity, the great loneliness and beauty of the canyon. Leave it as it is. You cannot improve on it … what you can do is to keep it for your children, your children's children, and for all who come after you."

The words would come to embody the most important legacy of his presidency. Appalled by the ravaging of the American wilderness by unscrupulous businesses, Roosevelt moved to protect nature and establish an ethos of environmental stewardship. Today, over 230 million acres of public land are under Federal protection due to his vision.

If we could bring one of history's great naturalists back to life, what would he make of the business-nature relationship in 2023? In making his assessment, he might consider three themes.

1

Businesses are starting to understand: Profits begin with a healthy planet

Sustainability practitioners have a penchant for jargon. And a new entry into the ESG word salad is 'nature-positive business agenda'. The language is verbose, but its implications are profound. The phrase refers to the inclusion of environmental stewardship into corporate strategies.

An old example explains why the change is important. The murex snail was once the most valuable resource in the world. Over 3,600 years ago, Phoenicians (ancient Lebanese) from Tyre somehow discovered that boiling parts of sea snails created a dye known as Tyrian purple. Tens of thousands of snails were needed to colour a single swatch of fabric.

The result, though, was magic. Unlike other colours, Tyrian purple intensified with wear – a quality so remarkable that only the highest born (think Cleopatra and Caesar) were deemed fit to 'wear the purple'. In time, the Phoenicians killed their golden goose. The murex went extinct on the Mediterranean shore and Tyre never recovered the wealth and status it once enjoyed.

Today, many business people recognise nature's importance, but they don't see any obvious link between the environment and their pursuit of profit. Like the Roman emperor who never thought of the snail behind his rarefied cloak, they fail to internalise the lesson that long-term profits are conditional on well-functioning ecosystems. Everything we produce, from chocolate to microchips, relies on the air, soil, water, plants and animals hiding in plain sight.

2

Business has never priced nature's freebies: What's different this time?

So what, you might say. The private sector has never priced externalities. In 2021, less than 20 percent of S&P 500 companies made nature-related commitments. A review of 400 businesses globally in April 2022 found only 5 percent had a good understanding of their environmental impacts.

Two significant drivers will make 2023 a watershed year for nature, in the same way that the 2015 Paris Agreement heralded fresh action on climate change:

1. At the UN Biodiversity Conference (COP15) in Montreal in December 2022, 188 governments reached a landmark agreement to stop biodiversity loss, with an ambitious pledge to restore and preserve 30 percent of the planet by 2030. The targets set in Montreal will provide the basis for future regulation and governments will expect business to do its part.
2. The Taskforce on Nature-related Financial Disclosures (TNFD) is a global initiative to help companies improve the quality and consistency of their reporting on nature-related risks and opportunities. The TNFD will finalise its guidance in September 2023, which will ramp up investor scrutiny on how companies are managing and reporting on nature.

Currently, a lack of consistency in ways to understand, assess and manage nature-related impacts makes it difficult for businesses to set measurable baselines and integrate nature into their strategies. Guidance from these initiatives provides a useful start.

3

OK, I'm convinced nature matters to business: What should I do?

If you're a CEO, board member, or otherwise responsible for considering how nature-related risks and opportunities might impact your business, there are four steps to consider in 2023:

1. **Complete a readiness review:** Screen your organisation for biodiversity risks. Start with your own operations. Review how your business activities *depend* on natural resources, and how they *impact* natural systems. Then move to consider your investments and value chains.
2. **Familiarise yourself with key frameworks and tools:** The TNFD, Science-based Targets for Nature (SBTN), and the CDSB Biodiversity Guidance are the best places to start. You can also begin by gathering data to estimate how your operations affect nature by using guidance from the Natural Capital Protocol (NCP).
3. **Incorporate a nature-positive agenda into your strategic planning and reporting:** Insights from your readiness review and the frameworks and tools above will help you establish a measured baseline of how your business impacts nature (such as through exploitation of natural resources, pollution, GHG emissions, land-use change, etc.). From this measured baseline, you can set targets, timelines and a narrative around how your actions lead to net gain.
4. **Signal your intent to become a biodiversity leader:** Move fast when an sustainability-related opportunity is certain to become a compliance obligation over time, as early movers can compound their impact and build a strategic and reputational advantage. The best way to signal your leadership to investors, employees and others is to publish your first biodiversity strategy, which should outline your focus areas, existing initiatives, and long-term ambitions.

INVESTMENT IN NATURE COULD GENERATE UP TO $10 TRILLION IN ADDITIONAL ANNUAL BUSINESS REVENUE AND CREATE 395 MILLION NEW JOBS BY 2030.

Companies willing to do the hard work can financially benefit. With investors, employees and consumers keen to support eco-friendly solutions, investment in nature could generate up to $10 trillion in additional annual business revenue and create 395 million new jobs by 2030.

More importantly, the affirmation of history waits for those capable of reinventing a new role for business on this planet.

As Roosevelt said in a speech in Kansas more than a century ago, "the nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased; and not impaired in value."

/ WORDS BY
Luke Heilbuth
CEO, BWD Strategic

/ NATURE DEVELOPMENTS

TNFD: Deep dive

Pending final consultation, the TNFD is expected to be released in September 2023.

Whilst the framework will be voluntary, similar to the recommendations of the TCFD, it will be instructive for companies of all sizes and sectors looking to understand and report on nature-related risks and opportunities relevant to their businesses and value chains. As momentum around sustainability disclosures – both financial and non-financial – continues to grow, it is anticipated that investors and other stakeholders will place increasing expectations on companies to disclose nature-related impacts and dependencies. Meanwhile, regulators both in Australia and overseas are expected to closely monitor these developments and consider the role of TNFD-style reporting in future mandatory sustainability disclosure requirements.

Understanding links between business and nature

Human activity is destroying biodiversity at an unprecedented rate, with activities linked to food production, land and ocean use, infrastructure, and energy and mining accounting for almost 80% of impacts on threatened species.[28] In parallel, recognition of the dependence of human wellbeing and economic prosperity on nature is expanding: over half of global GDP (US$44 trillion) has been found to be moderately or highly dependent on nature and its services, and therefore exposed to nature loss.[29] In its 2022 Global Risks Report, the World Economic Forum named biodiversity loss, along with climate action failure and extreme weather, as the most potentially severe risk over the next decade.[30]

In light of these indisputable and alarming links between the impacts and dependencies of business on nature, organisations are beginning to recognise the need to factor nature into all decision-making, including financial, economic and business decisions.[31]

That said, most of today's companies, investors and lenders do not adequately account for their nature-related risks and opportunities: most companies do not consider how their supply chains, operations and enterprise values depend on, and impact, nature, and few lenders and investors assess nature-related risks and opportunities across their loans and investment portfolios.[32]

This immaturity in reporting practices for nature-related risks and opportunities contrasts with corporate reporting practices on climate-related risks and opportunities: since the recommendations of the TCFD were published in 2017, there has been a steady increase in demand for disclosure by investors and jurisdictions mandating TCFD-aligned disclosures, and over 70% of top Australian companies now report in line with TCFD.[33]

One reason for the gap between nature and climate reporting is the lack of consistency in ways to understand, assess and manage nature-related impacts, making it difficult for businesses to set measurable baselines and integrate nature into their decision-making processes.[34] Initiatives seeking to address this gap include the Nature Capital Protocol[35] – which sets out a framework for organisations to identify, measure and value their direct and indirect impacts and dependencies on natural capital – and, closer to home, the Accounting for Nature Certification Standard, which sets a standard for measuring and certifying changes in the condition of environmental assets.[36]

Against this background, the TNFD is a market-led, global initiative established in 2021 to address the need to factor nature into financial and business decisions,[37] with the aim of supporting a shift in global financial flows away from nature-negative outcomes and toward nature-positive outcomes.[38] Leveraging the work by the TCFD, the TNFD is developing a risk management and disclosure framework for organisations to report and act on evolving nature-related risks and opportunities relevant to them (Framework).

Figure 1: The TNFD's draft recommended disclosures (source TNDF Beta Framework v.04)

GOVERNANCE	STRATEGY	RISK & IMPACT MANAGEMENT	METRICS & TARGETS
Disclose the organisation's governance around nature-related dependencies, impacts, risks and opportunities.	**Disclose the actual and potential impacts of nature-related dependencies, impacts, risks and opportunities on the organisation's businesses, strategy and financial planning where such information is material.**	**Disclose how the organisation identifies, assesses and manages nature-related dependencies, impacts, risks and opportunities.**	**Disclose the metrics and targets used to assess and manage relevant nature-related dependencies, impacts, risks and opportunities where such information is material.**
Recommended Disclosures **A.** Describe the board's oversight of nature-related dependencies, impacts, risks and opportunities **B.** Describe management's role in assessing and managing nature-related dependencies, impacts, risks and opportunities.	**Recommended Disclosures** **A.** Describe the nature-related dependencies, impacts, risks and opportunities the organisation has identified over the short, medium, and long term. **B.** Describe the effect nature-related risks and opportunities have had and may have on the organisation's businesses, strategy, and financial planning. **C.** Describe the resilience of the organisation's strategy to nature-related risks and opportunities, taking into consideration different scenarios. **D.** Disclose the locations where there are assets and/or activities in the organisation's direct operations, and upstream and/or downstream and/or financed, where relevant, that are in: high integrity ecosystems; and/or areas of rapid decline in ecosystem integrity; and/or areas of high biodiversity importance; and/or areas of water stress; and/or areas where the organisation is likely to have significant potential dependencies and/or impacts.	**Recommended Disclosures** **A (i)** Describe the organisation's processes for identifying and assessing nature-related dependencies, impacts, risks and opportunities in its direct operations. **A. (ii)** Describe the organisation's approach to identifying nature-related dependencies, impacts, risks and opportunities in its upstream and downstream value chain(s) and financed activities and assets for assessment. **B.** Describe the organisation's processes for managing nature-related dependencies, impacts, risks and opportunities and actions taken in light of these processes. **C.** Describe how processes for identifying, assessing and managing nature-related risks are integrated into the organisation's overall risk management. **D.** Describe how affected stakeholders are engaged by the organisation in its assessment of, and response to, nature-related dependencies, impacts, risks and opportunities.	**Recommended Disclosures** **A.** Disclose the metrics used by the organisation to assess and manage material nature-related risks and opportunities in line with its strategy and risk management process. **B.** Disclose the metrics used by the organisation to assess and manage dependencies and impacts on nature. **C.** Describe the targets and goals used by the organisation to manage nature-related dependencies, impacts, risks and opportunities and its performance against these.

Nature Developments TNFD: Deep dive (continued)

Evolution of the Framework

The Framework – which is currently in its fourth and final draft beta iteration – is designed for companies and financial institutions of all sizes and across all sectors, and comprises three key components:

1. Core concepts and definitions for understanding nature. This part of the Framework sets out detailed definitions of nature, business, dependencies and impacts, and nature-related risks and opportunities. With respect to risks, the Framework identifies three different types of nature-related risks (physical, transition, and systemic) and specifically addresses the close link between nature-related risks and climate-related risks.[39]
2. Guidance for assessing nature-related issues and incorporating them into enterprise strategies and risk management processes to inform decision-making using the LEAP approach. The LEAP approach entails four phases, which are two follow an initial scoping exercise to identify organisational priorities (see page 23).
3. Guidance for making disclosures on nature-related issues. This guidance follows the four-pillar approach of the TCFD recommendations (Governance, Strategy, Risk Management and Metrics and Targets), with the third pillar also including impact management considerations.

These key components were broadly embedded in the initial draft (v0.1) of the Beta Framework, which was released in March last year for public comment. Feedback on that version sought (among other things) more specific guidance on how to implement the LEAP approach and clarification of definitions, and emphasised the need for the Framework to be practical to implement.[40]

The following draft (v0.2), released in June 2022, introduced the TNFD's proposed approach to metrics and targets, and draft guidance on dependency and impact metrics. It also outlined the TNFD's plans to releasing sector-specific guidance for implementing the Framework, and provided updated guidance on LEAP for financial institutions[41].

The third version (v0.3) of the Framework was subsequently released in November 2022[42]. In this version, the TNFD expanded the draft disclosure recommendations to incorporate impacts and dependencies on nature as well as risks and opportunities. It also proposed new disclosure recommendations in relation to supply chain traceability, the quality of stakeholder engagement and the alignment of an organisation's climate and nature targets. Version 0.3 included an adaptive approach to the application of the disclosure recommendations in order to accommodate the preferences and needs of organisations as well as to support early action by organisations, as well as enhanced practical usability of LEAP.

Most recently, on 28 March 2023, the TNFD released the fourth and final beta version of the Framework, before the official version 1.0 is released this September.[43] This final draft version contains 14 recommended disclosures (these now comprise three additional nature-specific recommendations to the 11 recommended disclosures included in the TCFD recommendations), and six overarching 'general requirements' which cut across the four pillars of recommendations (see figure 1).

Importantly, the fourth version of the Beta Framework outlines the TNFD's approach to disclosure metrics: the set of qualitative and quantitative metrics that reporters can use to support their nature-related disclosure statements. The disclosure metrics are grouped into three 'tiers':[44]

1. 'Core Global Disclosure Metrics', which are relevant broadly to organisations across sectors and are reflected in global policy priorities, including the Kunming-Montreal Global Biodiversity Framework agreed in December 2022;
2. 'Core Sector Disclosure Metrics', which enable capital providers to make comparable assessments of businesses within a sector; and
3. 'Additional Disclosure Metrics', which enable report preparers to include metrics that are relevant to their particular business.

Also importantly, the final draft version sets out the TNFD's approach to adapting the concept of 'scopes' in climate reporting to the nature context to 'direct operations', 'upstream', 'downstream', and (for financial institutions), 'financed activities.[45]

Further, while previous versions of the Framework proposed draft guidance for financial institutions on how to apply the LEAP approach to assessing nature-related risks and opportunities, the fourth version updates this guidance, and adds guidance for the mining and metals, agriculture, and energy sectors.[46] It also contains additional guidance on using LEAP for companies that produce, operate or source in four particular biomes (for example, tropical forests and rivers and streams).[47]

Looking ahead: release of the final Framework expected in September

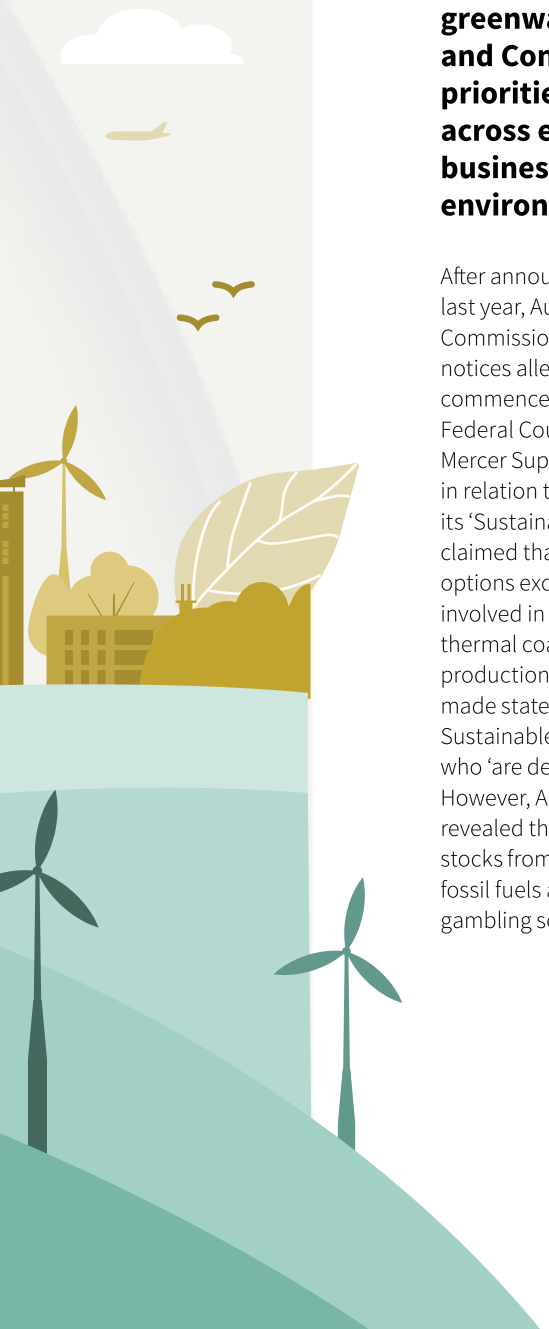
The TNFD is seeking feedback on version 0.4 and insights from pilot testing until 1 June 2023, and expects to finalise the Framework in September 2023. Priorities in the leadup to releasing the final Framework include (among other things) working with other standard-setting organisations such as the ISSB and GRI to translate TNFD's recommendations into global disclosure standards; developing additional sector- and biome-specific guidance; and considering the need for TNFD guidance on net zero transition plans and nature-focused transition plans.[48]

In the lead up to the release of the final Framework, businesses should familiarise themselves with version 0.4, and consider piloting the draft Framework to get the process for assessing and managing relevant nature-related risks and opportunities underway.[49] Businesses in sectors and biomes for which specific guidance has been released should engage with that guidance and provide feedback where appropriate, through becoming a member of the TNFD forum. Further, the TNFD is currently working to prepare additional guidance for the aquaculture; chemicals and pharmaceuticals; forestry; infrastructure and real estate; and textiles and apparel sectors, and companies in these sectors should monitor for release of that guidance.[50]

/ WORDS BY
Ilona Millar and Emily Morison
Gilbert + Tobin

IMPORTANTLY, THE FOURTH VERSION OF THE BETA FRAMEWORK OUTLINES THE TNFD'S APPROACH TO DISCLOSURE METRICS: THE SET OF QUALITATIVE AND QUANTITATIVE METRICS THAT REPORTERS CAN USE TO SUPPORT THEIR NATURE-RELATED DISCLOSURE STATEMENTS.

Greenwashing



/ GREENCLAIMS UPDATES

Recent updates in Australia

There has been increasing action from Australian regulators against greenwashing, which was listed as one of the Australian Competition and Consumer Commission's (ACCC) compliance and enforcement priorities for 2022/2023. Following an 'internet sweep' of 247 businesses across eight sectors, the ACCC identified that 57% of those businesses had made what the ACCC considered to be concerning environmental claims.

After announcing greenwashing as a priority area last year, Australian Securities and Investments Commission (ASIC) has issued several infringement notices alleging greenwashing. Further, ASIC has commenced civil penalty proceedings in the Federal Court for alleged greenwashing conduct by Mercer Superannuation (Australia) Limited (Mercer), in relation to statements on Mercer's website about its 'Sustainable Plus' investment options. Mercer claimed that its 'Sustainable Plus' investment options excluded investments in companies involved in carbon intensive fossil fuels such as thermal coal, and companies involved in alcohol production and gambling. Further, Mercer allegedly made statements on its website marketing the Sustainable Plus funds as suitable for members who 'are deeply committed to sustainability'. However, ASIC alleges that its investigations have revealed that the Sustainable Plus funds held 15 stocks from companies involved in carbon intensive fossil fuels and 34 stocks across the alcohol and gambling sectors.

ASIC therefore claims that by reason of Mercer's marketing statements that the Sustainable Plus funds were suitable for members 'deeply committed to sustainability' and its promotion of these sector exclusions, Mercer engaged in conduct that could mislead the public and made false and misleading statements to consumers in breach of its legal obligations. This is a landmark case, marking the first time the corporate regulator has taken a company to court for greenwashing.

The proceeding also adds Mercer to a growing list of superannuation firms who have faced legal action in relation to their climate and sustainability-related claims. In this regard we also note that in August 2022 the Environmental Defender's Office wrote letters to HESTA and UniSuper on behalf of members raising concerns that these funds had engaged in misleading or deceptive conduct in breach of the Corporations Act and ASIC Act by making various representations about being leaders on climate action while simultaneously investing in carbon intensive industries.

/ GREENCLAIMS UPDATES

European Commission proposes a Green Claims Directive

As part of a global push to tackle 'greenwashing', the European Commission has proposed a new law preventing businesses from using misleading and unsubstantiated environmental claims[52].

In March 2023, the European Commission published their proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive).[51] The Green Claims Directive aims to address greenwashing by establishing a clear and uniform regime for the regulation of environmental claims across the EU. The goal is to ensure that "consumers are provided with reliable, comparable and verifiable information which enables them to make more environmentally sustainable decisions". The Commission also wants to boost the competitiveness of companies that are taking genuine efforts to increase sustainability. According to the Green Claims Directive, an 'environmental claim' means any message or representation, in any form, which states or implies that a product or trader:

— Has a positive or no impact on the environment; or
— Is less damaging to the environment than a competitor; or
— Has improved their impact over time.

The Green Claims Directive distinguishes between 'explicit' environmental claims, and 'comparative' environmental claims. When communicating explicit environmental claims, claims will need to include information on how the consumer should use the product to achieve the expected environmental performance and a time-bound commitment for any purported improvements. Comparative environmental claims will need to, amongst other things:

— Use equivalent data and information in making a comparison;
— Use data that is sourced in an equivalent manner;
— Ensure that all stages along the value chain is covered in an equivalent manner; and
— Ensure that any assumptions used for the comparison are set in an equivalent manner.

The proposed Green Claims Directive also states that any environmental labels must fulfil the same requirements as above and are subject to verification by a third-party conformity assessment body. The Directive also sets out requirements for environmental labelling schemes and prohibits labels that use an aggregate scoring of the product's overall environmental impact, unless set in EU rules.

While the Green Claims Directive will be adopted and implemented only by countries within the European Union, greenwashing is of focus for many regulators globally, including the ACCC. The ACCC actively coordinates with the European Commission and other global regulators and looks to align its enforcement approach. Greenwashing is prohibited by the Australian Consumer Law (ACL) if environmental claims are found to be misleading or deceptive to consumers. The ACCC has identified greenwashing as an area of concern in its public enforcement policies for the past two years. Earlier this month, the ACCC announced that its top compliance and enforcement priority for 2023/24 will be investigating concerns relating to environmental claims and sustainability, continuing a focus on this issue by the ACCC in 2022/23.

/ WORDS BY
Ilona Millar and Ashleigh McCoach
Gilbert + Tobin

/ INTERVIEW DERRYN HEILBUTH

ESG in the boardroom

Helga Svendsen is a Facilitator, Coach and Mentor and hosts the *Take on Board* podcast. This is an edited version of her conversation with BWD Strategic Chair Derryn Heilbuth.

Helga Svendsen

Today, we're talking about ESG in the boardroom. I'm reflecting on your introduction, which is – I hope I'm not simplifying too greatly – about communications and messaging, and storytelling and strategy, which is not often what people think about when they think of ESG. So I'm guessing you've got a slightly different angle on this than maybe some of the other guests that we've talked to ESG about. So for you, where should we start with ESG for board members?

Derryn Heilbuth

Well, it's probably worthwhile starting with how BWD Strategic came to be in ESG. Because, as you said in the intro, my background was journalism. And I then went into the corporate world, before starting the business. In the beginning the business focused on speech writing for Chairs and CEOs, as well as their letters and the editorial sections of annual reports. Reporting has always been very much in our DNA and when sustainability reports were introduced we did the first reports for many of the ASX top 20. (By that stage, we'd also built a design team.) But after a few years we realised that actually what was happening was that we were often retrofitting things into a sustainability narrative, instead of actually really doing the hard work required to embed sustainability into an organisation. Which is why we took the decision to pivot to a full sustainability consultancy.

We brought in the requisite skills so that we could go through what we've identified as the three vital stages: Assess, Develop and Disclose. As a first step (Assess) we review a client's ESG risks and opportunities to help executive teams identify and prioritise the issues that matter most to their long-term success. As a second step (Develop), we look at how we operationalise ESG. Because obviously, developing a strategy and roadmap, knowing who is going to take responsibility and accountability for these issues, and building ESG into a corporate strategy are all really important considerations. Finally, in terms communicating to stakeholders (Disclose), we understand the standards and what the investment community and rating agencies will be looking for and we help our clients produce meaningful public-facing reports.

HS

So it sounds like you've come in through the E part of ESG, the environmental side, I'm interested in how organisations really focus on that, rather than just having to report. So what should boards be thinking about to make sure it is really happening in their organisation and they're not greenwashing?

DH

The way to start that conversation is – and I think it's really worthwhile pointing this out, because it's something that is disturbing me at the moment – that there is an emerging critique of ESG. And this criticism can probably be categorised in four ways.

ESG in the boardroom (continued)

"WHAT'S REALLY IMPORTANT FOR BOARDS TO UNDERSTAND IS THAT ESG IS ESSENTIALLY ABOUT HOW YOU BUILD A BUSINESS THAT WILL BE SUSTAINABLE IN THE LONG TERM"

One is that it's a distraction, particularly in light of what's currently happening with energy security, the Ukraine war, geopolitical uncertainty, etc. The second, as you say, is that ESG, is sometimes cast as simply greenwashing. The third is that it's not really feasible because it's intrinsically too difficult. And you can't really measure it, at least in a practicable way. And then the fourth is that even when it is measured, there is no meaningful relationship to financial performance. I would argue that these criticisms demonstrate an absolutely fundamental misunderstanding of ESG.

So I think what's really important for boards to understand is that ESG is essentially about how you build a business that will be sustainable in the long term. It's about understanding how you deploy your purpose, your vision and your mission to create value – and for whom. It's about identifying the externalities that will preserve or erode that long-term value. And finally, it's about how you address and manage the topics that arise out of those externalities.

Let me give you a few examples. Supply chain disruptions, for instance caused by COVID and the war in Ukraine. A good ESG strategy would have identified a sustainable supply chain as a topic of material importance to the business. And given that the executive team would have identified that as a material topic, they would have considered scenarios and responses. So for instance, what are the risks associated with a single source supplier? If you have to suddenly start sourcing from multiple suppliers, what are the human rights risks in that supply chain? What alternative shipping routes are available should a country block a particular supply route? These issues would fall under the G of your ESG.

Another example would be decarbonisation. Standard setters and increasingly, regulators, are forcing companies to account for their emissions through their entire value chain, which means now that boards and executive teams do really have to understand Scope 3 emissions, which are those in your supply chain, as well as Scope 1 and 2, which are those that you own and control. Monitoring and measuring these falls under the E of your ESG strategy.

And let me give you one final example of the S in ESG. And that's changing employee expectations. If you had a good ESG strategy, you would understand the policies and procedures that you need to have in place to cope with the new attitudes to work, which now call for flexibility, hybrid workplaces, mental health days, and purpose-led workplaces. So to reiterate, this is what a good ESG strategy does and should counter the criticisms that it's something sitting at the side or it's not relevant. And to say it's not relevant to financial performance is an absolute nonsense.

HS

My understanding is there's quite a bit of evidence about the financial performance of those organisations that treat their ESG considerations seriously. As I understand it, evidence absolutely supports that those organisations perform better financially. Is that right?

DH

There is some evidence that they do, it's still not conclusive. But really, it's more about whether you're going to be here in the long term. And if you want to be here in the long term, you have to be aware of horizon issues that are going to impact your business and how you're going to address them. That is fundamental to ESG, because how does your business need to pivot to meet new challenges? To get back to your question about communication, I think that that is one of the issues that befuddles people working in sustainability and ESG. Clarity, and taking something really complex, and finding a way to explain it in a clear way, is extraordinarily important. In a way that is what has partially bedevilled the progress of sustainability. There's such an alphabet soup around the various standards and the terms people use when talking about ESG or sustainability, that I think people just get exhausted by it.

HS

Yes, it is it is sometimes like reading another language. I'm on the Finance Committee of a couple of my boards. I'm not an accountant. And when I sit down and stare at the finance reports, I can read them, but it takes me a little longer than some others because it's not the language that I'm used to using. And I think ESG can sometimes be a bit similar. So what's your advice to the boards in understanding this story? And also to people reporting up to the boards? How should they present it so that it is digestible for people?

DH

Again, I think we have to go back to what we really are trying to do with ESG and it's just not just a communication exercise. There are, for instance, new disclosure standards that are about to be released this year. And this is as a result of a push for a more consolidated way to report on ESG. So boards really need to understand that this is not a nice-to-have any more, they are going to have to report – and in a meaningful way. And it's really important, to answer your question, that those who are reporting to boards truly understand the new disclosure regime that is coming their way. Another concept that people working in ESG and reporting to boards need to get is what is called double materiality. Double materiality actually expands the traditional materiality lens and identifies which risks and opportunities are impacting your stakeholders and your financials. It goes beyond looking at issues that may be positively or negatively impacting the environment, the economy and people and looks at those material issue which have the potential to create or erode enterprise value. Decarbonisation, for instance, would be a material financial issue, as would a sustainable supply chain.

HS

So those are some examples of what it would be, can you give us an example of an organisation that you have worked with and how they worked through this.

DH

One example that I can give because their materiality assessment is consistently nominated as world class is CLP in Hong Kong, a major energy company that own assets in Australia and across Asia. We've worked with them for the past five or six years. Another is Incitec Pivot. They are two companies your listeners may like to have a look at.

HS

Are you able to talk us through that process?

DH

Sure. We start our materiality assessments with research and analyses on megatrends. We start with the big picture because the past is littered with once great companies, for example Kodak, that didn't understand how the world around them was changing. It's important for boards and executive teams to understand that a megatrend is something that you can't control, but you do need to decide how to respond to it. So once we've identified these, we gather insights, through stakeholder interviews and comprehensive SWOT analyses, into how your company is positioned to respond to them.

We then draw up a list of material impacts, risks and opportunities, assess them according to financial and stakeholder impacts, compare these to key competitors, and take a shortlist to a workshop with the executive team for validation and prioritisation.

HS

In terms of embedding ESG, what should boards be on the lookout for in their organisations?

DH

Basically, it's a question of roles and responsibilities? Who is going to own ESG in the business? Also, you need to establish clear objectives related to the material issues you've identified. These would be a mix of policies and procedures and initiatives that would ultimately be aligned to your strategic objectives. ESG has to be an integral part of your corporate strategy, and it has to be work to your purpose. One of the exercises we do to facilitate this is a value creation model, where we work with, again, the executive teams on helping them understand how their organisations create value and for whom. It's like a strategy on a page. It looks at the inputs that go into your business model. It asks: What's your strategy? What are your initiatives? What are your outcomes? And who are these outcomes for? And then, what is the evidence of these outcomes? It's a very useful strategic tool.

HS

That would be an incredibly valuable tool, both for internal and external audiences, There are so many things that we have touched on. What should I have asked that I haven't yet asked you.

DH

Well, maybe it's going back to your question about communication, which I don't think I answered really well. I have this analogy that I rather like. I recently attended a webinar, where one of the panellists was doing a doctorate in cultural geography. I'd never heard of this before. But what was so interesting was that he was inspired to pursue this topic when he first thought about the cultural narratives that attach to people's front and back yards. The front is what is presented to the outside world. And it's often neat and sterile and uninteresting. But it's what goes on in the backyard, where life is lived, and where the real and the important issues are. And I love that analogy for BWD Strategic, and what we're doing. Because what in essence we're doing is going and uncovering the hidden and emerging risks and opportunities in our clients' backyards. We're helping them to understand them, and advise on how to measure and monitor them. And then through our reporting and our fabulous design . . . I have to give a shout out to our wonderful design team, bring them into the front garden for everyone to see.

HS

Oh, I love that. I love it. Okay, so then what is the key point you want boards to take away from the conversation that we've had today?

DH

I want boards and executive teams to really rethink ESG. To understand that it is not a peripheral issue that sits on the side, it's actually core, not only to their business and corporate strategy, but to their long-term value. It provides a real understanding on how they can either preserve or erode value in the long term, if they get it right.

WE START WITH THE BIG PICTURE BECAUSE THE PAST IS LITTERED WITH ONCE GREAT COMPANIES, FOR EXAMPLE KODAK, THAT DIDN'T UNDERSTAND HOW THE WORLD AROUND THEM WAS CHANGING

/ LISTEN TO THE PODCAST

helgasvendsen.com.au/take-on-board-podcast/episode-186-derryn-heilbuth/

Employment

Workplace Developments

Amendments to the *Anti-Discrimination and Human Rights (Respect at Work) Act 2022* (Cth)

On 28 November 2022, the *Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022* (Cth) was passed. This legislation introduced a positive duty for employers to take reasonable and proportionate measures to eliminate sex discrimination, sexual and sex-based harassment, hostile work environments and victimisation.

Introducing the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill* (Cth)

On 8 February 2023, the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill* (Cth) was introduced to parliament. The bill proposes to require employers to publish their gender pay gaps and to provide their Workplace Gender Equality Agency (WGEA) gender equality reports to their governing bodies It also proposes to set new requirements for policies relating to gender equality.

Numerous significant amendments to the *Fair Work Act 2009* (Cth) (Fair Work Act)

Several amendments to the Fair Work Act were also passed in late 2022. From 7 June 2023, pay secrecy clauses can no longer be included in employment contracts or other written agreements. This complements the workplace gender equality legislation referred to above in pursuit of increased transparency around wages and gender pay gaps. Further, the Fair Work Act has also been amended to require employers to provide 10 days of domestic violence leave to employees.

THESE REFORMS DEMONSTRATE A CLEAR FOCUS ON WORKPLACE GENDER EQUALITY, BOTH IN TERMS OF TREATMENT IN THE WORKPLACE AND PAY.

/ WORDS BY
Tom Brett
Gilbert + Tobin

Due diligence and governance

/ DUE DILIGENCE AND GOVERNANCE

Privacy Act Review Report: Highlights and Hot Takes

On the 16th of February, the Attorney-General released the *Privacy Act Review Report* (the Report). The Report contains 116 proposals for reforming the *Privacy Act 1988* (Cth) (the Privacy Act). These proposals aim to make, in the Attorney-General's words, the Privacy Act "fit for purpose" to "*adequately protect Australians' privacy in the digital age*".

The Attorney-General first announced that the Australian Government would conduct a review (the Review) of the Privacy Act in December 2019. The Review aimed to investigate the effectiveness of Australia's current data protection regime to ensure it "empower[s] consumers, protect[s] their data and best serve[s] the Australian economy". Now, following the publication of an issues paper in October 2020, a discussion paper in October 2021 and several rounds of public consultation, the long awaited Report has been released.

The 116 proposals are described at a principles level. The Report does not attach an exposure draft of any reform legislation and many of the proposals are marked as being subject to further consultation. While the Report gives us a clearer picture of the future direction of the Privacy Act, there are still many important details that need to be filled in.

Despite this lack of detail, it's becoming very clear that the upcoming Privacy Act reforms will require businesses to make substantial changes to the way they interact with individuals and handle personal information.

The requirement to act fairly and reasonably when collecting, using and disclosing personal information (Proposal 12)

The Report stresses that this requirement will be judged on an objective standard and will apply regardless of any consent – meaning that tick boxes and privacy policies will not cure inappropriate data collection and use. Helpfully, the Report lists a number of factors to be taken into account when determining whether any collection, use or disclosure of personal information is fair and reasonable. This broad fairness concept mirrors the ACCC's continued advocacy for a general prohibition on unfair trading practices in the fifth Digital Platform Services Inquiry.

Amended definition of consent (Proposal 11)

To make it clear that consent must be voluntary, informed, current, specific and unambiguous – which is the same standard of consent contained in our existing Australian Privacy Principles (APP) Guidelines. However, there is no proposal to change the circumstances in which an APP entity is required to obtain consent and the Report notes that consent does not need to be express, implied consent may still be relied upon (provided the implied consent is 'unambiguous'). The Report also proposes that the Office of the Australian Information Commissioner (OAIC) develop guidance on how online services should design consent requests – which could result in a major UX re-design process for many online services.

Broader definition of personal information (Proposals 4.1 - 4.4)

The Report proposes changing the word 'about' in the definition of personal information, to 'relates to' (that is, "*information or an opinion that relates to an identified individual…*"). This change would allow the definition to capture a broader range of information. The change would also bring the definition in line with other Commonwealth legislation that uses 'relating to' when regulating information on privacy (for example, the *Competition and Consumer Act 2010* (Cth) and the *Telecommunications (Interception and Access) Act 1979* (Cth)) and bring the Privacy Act definition in line with the language used in the General Data Protection Regulation (GDPR) definition of 'personal data'. The Report also proposes that any inferred or generated information will be deemed to have been 'collected' within the meaning of the Privacy Act. This will have important consequences for the AI industry.

Direct right of action to enforce privacy rights (Proposal 26)

The Report proposes a direct right of action for individuals who have suffered loss or damage as a result of an interference with their privacy. This would allow individuals (and representative groups) to seek compensation in the Federal Court or the Federal Circuit Court. Importantly, this direct right of action is not proposed to replace the existing complaints process and individuals will have to make a complaint to the OAIC prior to commencing court action.

Privacy Act Review Report: Highlights and Hot Takes (continued)

Additional obligations around de-identified information (Proposals 4.5 – 4.8)

The Report proposes extending APP 11.1 (obligations to protect de-identified information from unauthorised access or interference) and APP 8 (obligation to take steps reasonable in the circumstances to ensure overseas recipients do not breach the APPs) to apply to de-identified datasets. The Report also recommends prohibiting APP entities from re-identifying de-identified information received from a third party and introducing a new criminal offence for "malicious" re-identification intended to harm or cause illegitimate benefit. This may impact organisations that rely on anonymisation and de-identification to perform data analytics, including the AI industry.

Tighter timeframes for Notifiable Data Breaches (Proposal 28)

The Report proposes that the deadline for reporting eligible data breaches to the OAIC will be reduced to (a GDPR-familiar) 72 hours from when the entity becomes aware that there are reasonable grounds to believe that there has been an eligible data breach. Notification to impacted individuals must be completed 'as soon as practicable'. Under the existing regime, where an entity has reasonable grounds to suspect, but does not yet believe, that an eligible data breach has occurred, it has a 30 day period to make an assessment of the breach. The Report also proposes that any statement issued to the OAIC or any individual about an eligible data breach must set out the steps the entity has taken or intends to take in response to the breach.

Additional obligations when handling employee records (Proposal 7)

Some businesses may give a sigh of relief that the employee records exemption is to be retained, but on a more nuanced basis – that is certain Privacy Act obligations will be extended to private sector employees. In particular, obligations relating to transparency of collection and use of employee information, protection against unauthorised access or interference, and eligible data breach reporting. The Report flags that further consultation is required to determine how this should be implemented in legislation and hints that it could use either the architecture of the Fair Work Act or the Privacy Act. The nature of Australia's current employee records exemption is speculated to be a major barrier for achieving GDPR adequacy status, so it may be surprising to some to see that the exemption will be mostly retained.

Introduction of the concept of processors and controllers in Australian law (Proposal 22)

The Report proposes that, where processors are acting on the instructions of a controller, they will have fewer compliance obligations under the Privacy Act. This is likely to be a welcome proposal to many businesses who currently struggle with implementing some of the existing APPs where there is no direct touchpoint with individuals. The Report suggests that processors would only be responsible for complying with APP 1 (open and transparent management of personal information), APP 11 (security of personal information) and the notifiable data breach scheme (albeit it is proposed that processors will only be required to notify the OAIC and the controller, not impacted individuals).

The requirement to conduct Privacy Impact Assessments (Proposal 13)

The Report proposes mandatory Privacy Impact Assessments (PIA) for any 'high privacy risk activity', which would encompass activities 'likely to have a significant impact on the privacy of individuals'. In completing a PIA, an APP entity would be required to assess potential impacts on privacy, consider whether these are proportionate and may be required to mitigate these impacts. The Report proposes that the OAIC will publish guidance specifying factors that may be indicative of a high-risk activity to help APP entities understand when they need to complete a PIA.

Regulation of the use of personal information in automated decision making (Proposal 19)

The Report proposes more transparency around personal information used in "substantially" automated decisions which have a legal or significantly similar effect on an individual's rights. Where personal information is used for this kind of automated decision making, this will need to be called out in a privacy policy, as well as the types of personal information used. It is also proposed that individuals will have the right to request information about how the automated decisions using their personal information are made. While these proposals are modelled on Article 22 of the GDPR, they will apply to a wider range of automated decision making than the GDPR which is limited to decisions that are solely automated (and have a legal or significantly similar effect on individual rights), rather than substantially automated.

Regulation of targeted advertising (Proposal 20)

The Report proposes prohibitions on the use of information related to an individual (including personal information, de-identified information, and unidentified information (such as internet tracking history)) for targeted advertising and content to children, and prohibitions on using sensitive information for targeted advertising and content to any individuals. Individuals have a right to opt-out of receiving targeted advertising and content, and any permitted targeting must be 'fair and reasonable' and come with transparency requirements about the use of algorithms and profiling to recommend content to individuals. These changes draw from regulation introduced by the European Commission last year under the Digital Services Act.

Additional protections for children and vulnerable persons (Proposals 16 and 17)

Several additional protections are proposed specifically in relation to children. These include codification of existing OAIC guidance on consent and capacity, requiring entities to make collection notices and privacy policies 'clear and understandable', and requiring entities to have regard to the best interests of the child in its consideration of the fair and reasonable test. The Report also proposes developing a Children's Online Privacy Code applicable to services that children are likely to access, which would be modelled on the UK's Age Appropriate Design Code. The Report also proposes that where an activity may have a significant impact on vulnerable persons, this must be considered in the fair and reasonable test, and a PIA must be performed. These proposed reforms may require organisations, depending on their business, to adopt different data handling practices across their customer base.

Statutory tort of privacy (Proposal 27)

The Report recommends the introduction of a statutory tort for serious invasions of privacy that are intentional or reckless. Importantly, the invasion of privacy need not cause actual damage and individuals may claim damages for emotional distress. The Report suggests that the OAIC should be able to appear as amicus curiae and intervene in proceedings with leave of the court for both the direct right of action under the Privacy Act and the tort for invasion of privacy. A statutory tort for invasion of privacy was proposed in the Australian Law Reform Commission's 2014 Report *'Serious Invasions of Privacy'* and then again in the ACCC's 2019 'Digital Platforms Inquiry – Final Report', without ever being implemented into law.

Introduction of a right of erasure (Proposal 18.3)

The Report proposes introducing a right of erasure that would provide individuals with the ability to request the deletion of their personal information by APP entities. This right of erasure is essentially an extension of the obligation to delete personal information once it is no longer required, and individuals will be able to exercise this right in relation to any category of personal information. The Report also proposes a right of de-indexation, which is surprising because the Discussion Paper seemed to reject this idea. This will allow individuals to require search engines to de-index online search results where the results are excessive in volume, inaccurate, out of date, incomplete, irrelevant or misleading. Search engines will also be required to de-index sensitive information and information about minors. Importantly, the Report recommends that these rights should be subject to exceptions where: there are competing public interests, it is required or authorised by law, it is technically infeasible or an abuse of process.

Greater enforcement powers and penalties (Proposal 25)

In addition to the enhanced penalties and expanded OAIC powers passed in December 2022, the Report proposes various measures to strengthen enforcement of the Privacy Act. In particular, it proposes new civil penalties and a slew of new powers for the OAIC in relation to investigations, public inquiries and determinations. The Report also proposes to amend section 13G of the Privacy Act (the civil penalty provision for "serious or repeated interference with privacy") to provide more guidance on what amounts to a "serious interference". The threshold for a "serious interference" has been softened, and may include interferences that involve "sensitive information" or other information of a sensitive nature, interferences adversely affecting large groups of individuals (likely reflecting cyber incident circumstances), or serious failures to take proper steps to protect personal information. This is significant because, following the December 2022 amendments, the maximum penalty under amended section 13G of the Privacy Act is $50million+.

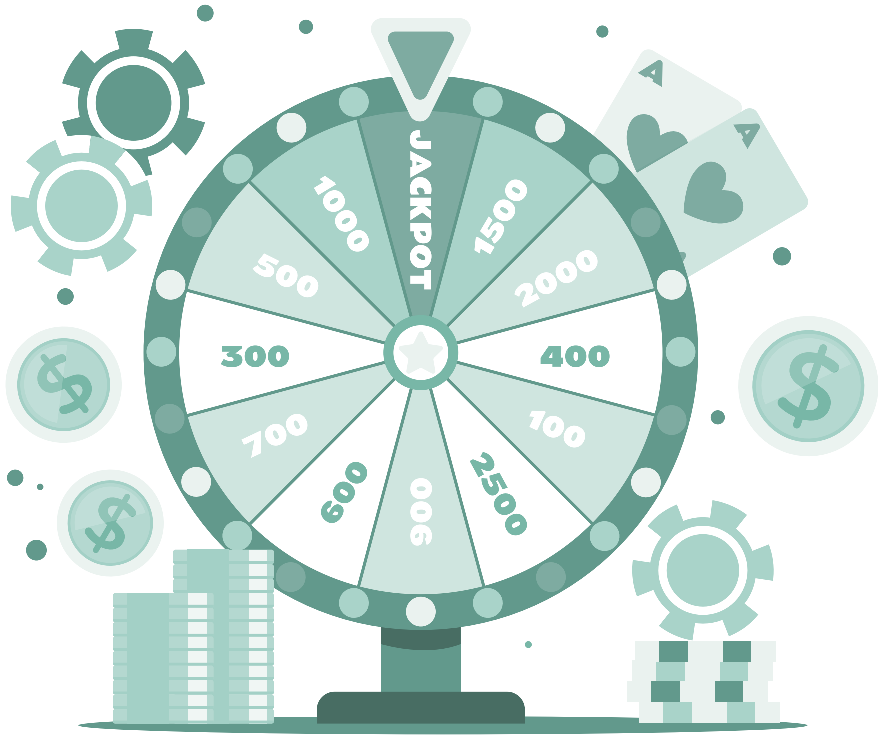
NEXT STEPS

After consultation with the private and public sectors, the Government will formally respond to the Report. We expect this response will indicate which of the 116 proposals will be implemented in amending legislation. After that, it is likely that an exposure draft of an amendment bill will be released but it is difficult to say at this stage how long that process will take given how long it took to get to where we are today.

/ WORDS BY
Melissa Fai, Andrew Hii and Claire Harris
Gilbert + Tobin

/ DUE DILIGENCE AND GOVERNANCE

ASIC's proceedings against Star an important reminder



In December 2022, ASIC launched proceedings against the entire board of directors, as well as certain executives, of The Star Entertainment Group Limited (Star), one of the largest casino operators in Australia.

The proceedings are the first that ASIC has commenced against an entire board of directors for alleged breaches of their statutory duty of care and diligence in respect of the oversight of non-financial risk.

For a number of years now, there has been significant focus on whether certain boards of directors had fulfilled their obligations in respect of the oversight of risk in various royal commissions and regulatory investigations and inquiries.

In 2019, ASIC released its "Director and officer oversight of non-financial risk report" and warned it had found that boards need to apply a greater focus and sense of urgency to the oversight and management of non-financial risk. The Financial Services Royal Commission had also emphasised the obligations of directors in respect of the oversight of risk, highlighting that directors needed to have a strong understanding of the company's risk profile and should ensure that appropriate systems and processes are in place to manage risk.

The announcement that ASIC had commenced proceedings against the Star board and executives came two weeks after Australian Transaction Reports and Analysis Centre (AUSTRAC) announced that it had commenced civil penalty proceedings against Star for alleged serious and systemic non-compliance with Australia's anti-money laundering and counter-terrorism financing (AML/CTF) laws in relation to the use by people with reported criminal links to launder millions of dollars of illegal funds.

In this respect, ASIC's proceedings follow a similar stepping stone approach to liability for directors that has been adopted in a number of other proceedings for breach of directors' duties, namely that it was a breach of the duty of care and diligence for the directors to either cause, or fail to prevent, the company to engage in conduct which was an alleged breach of law.

ASIC HAS ALLEGED THAT THE DIRECTORS APPROVED THE EXPANSION OF STAR'S RELATIONSHIP WITH CERTAIN INDIVIDUALS WITH REPORTED CRIMINAL LINKS, RATHER THAN ADDRESSING THE MONEY LAUNDERING RISK INHERENT IN THE OPERATION.

ASIC has alleged that the directors approved the expansion of Star's relationship with certain individuals with reported criminal links, rather than addressing the money laundering risk inherent in the operation of a large casino with an international customer base by inquiring into whether Star should be dealing with them. This appears to be an adoption of the stepping stones approach, given that these circumstances form part of the circumstances which AUSTRAC has alleged breaches of the AML/CTF laws.

In addition to this, ASIC has also alleged that the directors breached their duty of care and diligence when they were provided with information about money laundering risks affecting Star and did not take steps to make further enquiries of management about those critical risks. This is the first time that ASIC has commenced proceedings against an entire board of directors for breach of the duty of care and diligence in failing to provide proper oversight of risk management by the company.

ASIC Chair, Joe Longo, stated that the duty of directors is:

"to understand the operations of the company over which they preside, and the particular risks faced by the business. They are required to bring an inquiring mind to business operations. It is not set and forget."

With these proceedings, ASIC is sending a clear message of the importance of directors exercising their role to oversee risk within their organisation, to understand the risks that the company is subject to by being aware of the external environment in which the company operates and to ensure that the company is taking the appropriate steps to manage those risks. This requires challenge and probing of management in relation to these risks, and how they are being managed, not just accepting the information that is presented to the board on the management of risk.

In terms of the implications of these proceedings for other directors, they are no more than a further reminder of a consistent theme that all boards should be aware of – namely, the obligation that directors have to properly oversee the management of risk, both financial and non-financial, in their organisations. What this requires will vary depending on the company itself – and so directors need to have a very clear appreciation of the business of the company, the external environment in which it operates, the risks its business is subject to today and any emerging risks, scanning the external environment not only in Australia but also globally to gain this understanding.

With this knowledge, the board should set a risk appetite, which is regularly reviewed and updated where necessary. Directors should oversee the risk management framework that the company adopts to manage risk to the approved risk appetite. And then, perhaps most importantly, directors need to regularly review whether the company is operating in accordance with the framework and test and challenge management in relation to the way in which the company is managing risks.

Having said that, the ASIC proceedings are a very visible reminder of the importance of this obligation and the implications for directors of not meeting expectations.

/ WORDS BY

Karen Evans-Cullen
Gilbert + Tobin

ASIC IS SENDING A CLEAR MESSAGE OF THE IMPORTANCE OF DIRECTORS EXERCISING THEIR ROLE TO OVERSEE RISK WITHIN THEIR ORGANISATION, TO UNDERSTAND THE RISKS THAT THE COMPANY IS SUBJECT TO BY BEING AWARE OF THE EXTERNAL ENVIRONMENT IN WHICH THE COMPANY OPERATES.

/ESG CALENDAR

ESG Events and Conferences

A HAND-SELECTED WRAP-UP OF THE BEST ESG AND SUSTAINABILITY CONFERENCES AND EVENTS FOR THE QUARTER.

JUNE

ESG Summit 2023

Monday, 5 June, 2023
Hilton Sydney, AU

Driving sustainable growth: As businesses and investors progress on their path towards net zero, they're also grappling with economic, social and governance challenges. Balancing all of these business imperatives is no easy feat. At the Financial Review ESG Summit, we'll bring Australia's leading companies together with those who finance and invest in them to navigate these complexities, and uncover growth opportunities in a challenging economy.

More info: **https://live.afr.com/events/esg-summit-2023/**

ESG & Impact Forum

Thursday, 22 June –
Friday, 23 June, RACV City Club, Melbourne, AU

Facing challenges of a warming planet, social inequality and rapid technological advancement, governments are attempting to steer markets using regulation and multinational agreements (eg Net Zero by 2050). In contrast, super funds have a powerful tool to nudge behaviour - the way they allocate capital in the short, medium and long term.

More info: **https://www.ciiconferences.com.au/upcoming-events/esg-roundtable-2022**

JULY

Net Zero Week

Saturday, 1 July, 2023 –
Friday, 7 July

Net zero is the world's answer to stopping climate change. On the 27th June 2019, the UK became the first major economy in the world to pass laws to end our contribution to climate change. This is UK's national awareness week of the importance of Net Zero.

More info: **https://netzeroweek.com/**

ESG Summit VIC 2023

Tuesday, 18 July, 2023
Federation Square, Melbourne, AU

The 2023 ESG Summit VIC is the perfect platform for businesses to learn about what it takes to build a strong ESG strategy. This summit will feature interactive panel discussions, engaging keynotes, and practical case studies that demonstrate how businesses can implement a sustainable and socially aware ESG strategy.

More info: **https://forefrontevents.co/event/esg-summit-vic-2023/**

ESG Goals & Target Setting

Tuesday, 4 July, 2023
Adelaide Oval, North Adelaide, AU

A mountain of work has been invested into improving the sustainability of Australian agriculture and communicating this to the wider community. From industry frameworks, commodity certification, Government pledges and local initiatives, a wide array of sustainability activities are being undertaken in the sector. However, the next step in the ESG landscape which many of these initiatives have struggled with is setting goals and targets.

More info: **https://www.farminstitute.org.au/event/esg-goals-and-target-setting/**

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GILBERT + TOBIN

GTLAW.COM.AU

Level 35, Tower Two,
International Towers Sydney
200 Barangaroo Ave,
Barangaroo NSW 2000

T +61 2 9263 4000

For strategy and reporting advice:

BWD Strategic

BWDSTRATEGIC.COM

Suite 2, Level 1,
234 George St,
Sydney NSW 2000

T +61 422 339 069