How to start your ESG Journey

Risks and Opportunities

A practical guide for directors, executives, business owners and in-house counsel

ADDISONS

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1. Introduction

Local and international companies, large and small, are focusing on business growth being more sustainable.

The pressure to focus on sustainable growth is coming from various sources. Certainly, there has been debate as to whether the purpose of the modern company is to principally serve the interests of shareholders or whether there is a wider group of stakeholders to consider.

However, given recent reports that 98% of investors now evaluate companies having regard to their non-financial disclosures, it seems almost undeniable that the creation of long-term shareholder value is consistent with a company acting sustainably.

The purpose of this guide is to provide you with an overview of how to incorporate Environmental, Social and Governance **(ESG)** considerations into your business' decision-making processes. We look at some of the opportunities and risks that you may observe as you start to focus on ESG considerations, as well as examples of how some of our clients are tackling those opportunities and risks.

This guide is particularly relevant to the directors, executives, owners and in-house counsels of those businesses who are just starting their ESG journey.

2. What does ESG mean?

E
Environmental issues:

The resources, energy and processes used to produce a business' products.

The outputs from the processes used, including the desirable products and waste produced.

The risks of a changing climate.

S
Social issues:

The relationship the business has with its people and its community.

This covers labour relations, diversity, product safety and liability and supply chain management.

G
Governance issues:

How the business is managed, including its ethical framework, how it makes decisions and its controls and procedures.

2.1
Benefits from a focus on ESG considerations

Significant benefits can flow to a business that focuses on ESG considerations. These include:

Higher profits

It has been demonstrated that there is a strong correlation between a focus on ESG issues and higher returns

Better resource management

A focus on the cost and nature of a business' inputs may improve its resource efficiency, e.g., reducing energy costs with rooftop solar panels

Avoiding stranded assets

Companies can retire assets before their end date and find replacement assets. In 2021 a reported $10 billion of assets were writen down as new technologies replace fossil fuels

Better allocation of capital

Capital can be allocated to more sustainable opportunities and existing assets can be repurposed, e.g., turning car parks into residences to revitalise a city

Increased productivity

Employees satisfied with their jobs are known to be more productive

Employee retention

Employees satisfied with their jobs are known to stay in their roles longer, and new employees will want to join them

Avoid adverse government action

Being on the right side of the ledger may result in government support or avoid adverse government action

Better shareholder engagement

Recent reports show that a high proportion of shareholders are looking to their companies to address non-financial risks

Better environmental outcomes

A focus on the inputs and outputs of a business can lead to a better environment, e.g., a reduction in water and energy consumption

Improved product quality and safety

A focus on ESG considerations should result in better products and safety

Improved employee health and safety

A focus on ESG considerations should also result in better employee health and safety

3. How can you incorporate ESG considerations into your business?

Your business will already have a framework for making decisions to advance its corporate purpose. The next step is to include ESG considerations, including the risks and opportunities that may arise, into that framework.

3.1
Who should take charge of advancing your business' ESG journey?

The starting point is to decide who within your organisation is best equipped to take on the responsibility of examining your business' environmental and social considerations, and overseeing their governance within the organisation.

- Is it the Board?
- The Audit and Risk Committee?
- Or does an ESG-specific Board committee need to be established?

Some companies even have a designated executive (often referred to as a CSO, or chief sustainability officer) who is responsible for the company's sustainability programs, including taking the lead in identifying ESG considerations specific to the business and developing an Environmental and Social Risk Policy appropriate to the business.

Finding the most appropriate body or person within your business to oversee your company's ESG journey will depend on the size of your business and where it is along its ESG journey. However, ultimately, the Board will be accountable to stakeholders for the performance of the business in these matters.

3.2
What framework can you use for identifying and addressing ESG concerns?

Whether it is in an Environmental and Social Risk Policy or elsewhere, you will need to establish a policy that outlines a process for:

- identifying;
- assessing;
- managing;
- monitoring;
- mitigating; and
- reporting against,

material environmental and social risks across your business.

What should an Environmental and Social Risk Policy do?

Identify and assess risks

Your policy should direct your organisation to focus on the ESG concerns that matter most to your business, its stakeholders and its long-term success.

It may require, for example, periodic review of the key inputs and outputs of your business and their associated cost, from which the body responsible for overseeing your organisation's ESG strategy can identify areas of concern and opportunity that should or can be actioned as a priority, such as the business' consumption of water, electricity or gas, or its production of waste, to name a few.

Manage, monitor and mitigate risks

To manage those ESG concerns and opportunities that have been identified as most *"material"* to and *"actionable"* by your business, the key is to seek to integrate your business' response to these concerns and opportunities into the planning and decision-making processes at every operating level within the business.

An effective policy will require representatives from all divisions of your organisation to be involved in designing the relevant ESG strategy and setting the performance targets, so that the strategies implemented are viable and can deliver meaningful results.

An effective policy will also require regular monitoring and assessment of the business activities against the relevant ESG performance targets, and periodic review of the effectiveness and appropriateness of the business' ESG strategy, having regard to the business' own ESG goals as well as the benchmarks set by community expectations, industry standards and regulatory bodies.

Reporting against risks

On the reporting side, acceptable ESG metrics are still being developed to measure progress in ESG compliance.

As with the financial accounting system, it is likely to take many years to develop a comprehensive set of metrics. That however should not stop your business from starting its ESG journey.

Communication with stakeholders is vital.

To ensure a cohesive business response to E, S and G issues, make sure your Environmental and Social Risk Policy complements other policies in your business. This includes any Procurement Policy, Work Health & Safety Policy, Code of Conduct, Diversity & Inclusion Policy, Anti-bribery & Corruption Policy and Whistleblower Policy.

Knowledge:

Development of ESG metrics – where are we at?

Currently, a high percentage of the world's largest companies use the standards developed by the Global Reporting Initiative **(GRI)** to report on their sustainability performance.

More than half of the companies on the ASX100 List report in accordance with the GRI framework, including Mirvac Group (whose sustainability strategy we look at in more detail in Section 4) and Macquarie Group. Internationally, US-based Carlisle Companies Inc. is a good example of how foreign-based companies are providing stakeholders with information on their sustainability performance. Carlisle Companies Inc. recently issued its 2020 Sustainability/ESG Report as part of the launch of its new ESG-focused website. It has also appointed a Vice-President for Sustainability and is seeking certification under ISO 14001 Environmental Management Systems by 2025.

In December 2015, the G20 Financial Stability Board established the Task Force on Climate Related Financial Disclosures **(TCFD)** to develop recommendations for more effective climate-related disclosures that could promote more informed investment, credit, and insurance underwriting decisions. In 2017, TCFD released voluntary climate-related financial disclosure recommendations designed to help companies provide better information to support informed capital allocation.

The Sustainability Accounting Standards Board **(SASB)** has also published 77 industry standards to enable business to identify, manage and communicate financially-material sustainability information to their investors. In April 2021, GRI and SASB jointly published *A Practical Guide to Sustainability Reporting Using GRI and SASB Standards*, which shares experiences of companies that use the two sets of standards together to fulfil their reporting needs. A key finding of the research report was that each set of standards complements rather than substitutes the other, with GRI supporting broad and comprehensive disclosures on organisational impacts and SASB focusing on a subset of financially material issues.

The SASB, Carbon Disclosure Project (CDP), Climate Disclosure Standards Board (CDSB) and International Integrated Reporting Council (IIRC) have recently announced their intention to work together to develop a comprehensive corporate reporting system on ESG matters. These organisations set the frameworks and standards for sustainability disclosure, including climate related reporting, along with TCFD's recommendations.

At the 2021 UN Climate Change Conference in Glasgow (COP26), the IFRS Foundation Trustees announced the establishment of a new International Sustainability Standards Board which has been charged with developing a 'comprehensive global baseline of high-quality sustainability disclosure standards to meet investors' information needs'. This new entity will build on the work done by the TCFD.

4. How Addisons' clients are capturing ESG opportunities

Circular economy: Bega Cheese

Bega Cheese, a long-time Addisons' client, has recently announced an ambitious circular economy project within the Bega Valley region of New South Wales. While it is looking at specific projects for its own business, Bega Cheese is aiming to drive broader benefits for the community and region in which its business was conceived.

Addisons' Insight: Circular economies - implementing ESG goals

Changing everything: Mirvac Group

Mirvac Group is an Australian property group with approx. $25 billion of assets under management. Mirvac's sustainability strategy, *"This Changes Everything"*, targets the E, S, and G in "ESG" – ranging from being net positive in carbon and water, and sending zero waste to landfill, by 2030; leaving a positive community legacy; diverting $100 million to the social sector by 2030; being the most trusted owner and developer; and having an engaged, capable, and diverse workforce.

Some of Mirvac's ESG achievements include:

- announcing, on 16 November 2021, that it has reached its ambitious climate target to be net positive in carbon nine years early, an incredible sector leading accomplishment;
- 100% of its retail shopping centres and built-to-rent assets, and over 90% of its offices are powered by 100% renewable electricity;
- excellent recycling outcomes, with 95% of construction waste and 69% of operational waste being diverted from landfill, and targets to halve development waste and buy 25% of recycled content in major materials;
- using purchasing power for good by spending $28 million with social enterprises and Indigenous businesses in the last 3 years;
- being recognised as the "#1 Workplace to Give Back" by GoodCompany for its unlimited volunteer leave and uncapped matched employee donations policies; and
- launching its second Reconciliation Action Plan, including a commitment to the Uluru Statement from the Heart.

Green energy and nutrient recycling: Moxey Farms

Moxey Farms, part of the Australian Fresh Milk Holdings (AFMH) consortium, recently completed a waste to energy project developing a state-of-the-art bio-digester to mitigate the enterprise's impact on the environment. This is the first project in Australia using cow manure to generate green electricity. The bio-digester produces three megawatts of renewable energy, displacing the equivalent of about 25,000 tonnes of carbon emitted through traditional coal-fired energy production. The "green energy" is used to power dairy operations at Moxey Farms, with surplus electricity exported and sold to the public grid. The bio-digester also preserves and unlocks the nutrient value of waste, recovering nitrogen and phosphorous to be used as valuable crop inputs via precision application.

Enhancing existing energy storage technology: Nanoloy Energy

Nanoloy Energy is developing a high-performing, graphene-enhanced battery designed to overcome some of the key remaining barriers to mass adoption of electric vehicles. Most battery companies spend years developing a cell at lab-scale, then go on to spend many more years attempting (and usually failing) to develop suitable manufacturing hardware. Nanoloy is taking the reverse approach by reconfiguring and perfecting a mature manufacturing technology so that it can be used in the production of advanced battery electrodes.

Battery control systems: Relectrify

Relectrify is a developer and supplier of advanced control solutions that increase cycle life and reduce cost in energy storage solutions for homes, industry, the power grid and beyond.

Green bonds: Lendlease Group

In March 2021 Lendlease Group closed a $300 million round of 10-year fixed rate green bonds, following on from its successful issue of $500 million debut green bonds in October 2020. Developers, like Lendlease Group, are using green debt to fund projects which contribute to sustainability goals such as lowering carbon emissions and reducing environmental impacts.

Addisons' Insight: Bonding over green – benefits of green bonds for issuers and investors

5. How to scope out ESG opportunities

Here are a few suggestions for how to start scoping ESG opportunities:

Supply agreements

Review your supply chain agreements to see whether it would be appropriate to introduce sustainability obligations into them

Employee incentives

Reshape employee incentive plans to have performance conditions based on ESG policies

Carbon tax provisions

In anticipation of a possible carbon tax or the like, dust off those carbon tax clauses of a few years back

Clean energy alternatives

Consider solar power as an alternative energy source, and incorporating LED lighting and motion sensors

Green raw materials

Consider alternative raw materials for manufacturing processes that are more easily biodegradable or cause less environmental damage

Resourcing efficiency

Look at your resource efficiency (including the efficiency of your buildings and factories)

Recycling

Review your recycling policy including intra-business recycling (i.e. using waste from one business area as fuel for or to assist another process), recycling of obsolete products and disposal of electronic waste

Outsourcing

Consider outsourcing computer systems - a data centre powered by renewable energy will be more efficient and hopefully cost less

Go paperless

Consider executing and filing documents electronically to reduce paper use

Government incentives

Look at government incentives. E.g., the 2021-2022 Federal Budget included $26.4 million to help Australian businesses reduce energy costs through more energy efficient industrial equipment & business practices

Charity donations

Consider partnerships with charitable organisations to redirect certain products, such as food perishables, to individuals in need

Consumer advice

Provide advice to consumers on whether your packaging can be recycled

Practical Tip:

To look at some examples of green clauses, The Chancery Lane Project is a free resource of net-zero aligned terms created in collaboration by over 1,000 legal professionals. Despite being based on the laws of England, the Project provides some interesting ideas for how you might re-frame your organisation's legal documents.

6. ESG and M&A due diligence

It is more important now than ever for companies to carefully consider fully integrating ESG risk and impact analysis into the due diligence process of M&A deals.

ESG-related risks can have significant impacts on a business' reputation, its ability to integrate an acquired or merged business and can also influence parts of the deal process including the valuation of a target business and the structure of the deal. As such, prospective buyers need to consider ESG-specific due diligence questions and investigations, with the level of focus depending on the buyer's risk appetite, the size, nature and location of the target business, the industry in which the target business operates, among other considerations.

Practical Tip:

When approaching due diligence, be aware that ESG considerations are relevant to various stages of the M&A deal, from financing right through to integration.

Some important, but often overlooked, areas of due diligence to consider from an ESG perspective include:

- **Published reports: review target business' sustainability/ESG reports** – if the target is reporting under ESG frameworks such as GRI, TCFD or SASB, valuable information for due diligence purposes can be obtained from those reports, such as emission reduction targets, supply chain sustainability, human capital development and sustainability of the products that the target sells.
- **Financing: lender ESG standards** – if you are looking to finance an acquisition by debt, you may need to look at the target business' ESG issues against prospective lenders' ESG standards. Major banks in Australia and around the world are beginning to embed ESG considerations into their own strategy and operations. This can impact the ability and cost of obtaining debt financing.
- **Contracts: force majeure** – review the "force majeure" clauses in the target business' contracts to see if they can respond to a weather event. Ideally, weather events should be separated out from natural disasters into a stand-alone "climate risk" clause that specifically addresses their likely occurrence and outlines how the parties' responsibilities are to be divided.
- **Integration: ESG targets and policies** – to ensure that a merged group can meet ESG targets and operate effectively in accordance with established ESG principles post-merger, you should review the target entity's supply chain and operations and its ESG targets and policies early in the due diligence process.
- **Documentation: ESG-specific terms in transaction agreements** – transaction documents often include general ESG warranties in relation to areas such as employment, privacy, environment, corruption and anti-bribery. Specific ESG issues identified in the due diligence process can be addressed through specific indemnities, warranties and conditions precedent in transaction documents.

Insight:

Decarbonising the World – "Electrify Everything"

The move to a decarbonised world is happening at an accelerating pace.

The UN Secretary General commented that the Intergovernmental Panel on Climate Change's recent report is a **code red** for humanity.

> *"The alarm bells are deafening, and the evidence is irrefutable: greenhouse gas emissions from fossil fuel burning and deforestation are choking our planet and putting billions of people at immediate risk. Global heating is affecting every region on Earth, with many of the changes becoming irreversible."*

The mantra now is to *"electrify everything"*, ideally with the electricity coming from **"green"** electrons that are generated initially from renewable energy sources – i.e., solar, wind, hydro-power, geo-thermal and biomass – and then, energy storage solutions, such as batteries and other forms of long duration storage like pumped hydro.

The vision is that these **green** electrons will power industrial systems and commercial and residential processes and appliances. Where electricity is not a suitable source of power for an industry, the **green** electrons can be used to make **green** hydrogen and synthetic fuels and chemicals that can then power transport (e.g., ships and planes) and other industrial systems. On the long journey to full decarbonisation, the gas sector argues that hydrogen produced by using natural gas with the carbon released during the process captured and then sequestered will be an important energy source (**blue** hydrogen).

If not all carbon emissions can be eliminated, then carbon dioxide will have to be sequestered. Some have argued that carbon capture and storage in the earth is still an unproven technology at scale, others are still searching for solutions, including carbon storage in soil and the creation of other beneficial products from carbon.

Some argue the quickest way to get to "net zero emissions" is a carbon tax, others a carbon trading scheme and still others that technology will get us there. No matter how we get there, the journey to a decarbonised world will cause major disruption and dislocation to both industry and the individual. There will be winners and there will be losers.

In each country, it is the job of the planners (Government) to put in place a plan to keep the lights on at a reasonable cost (and people employed) as renewables seek to replace hydrocarbons as the world's primary power source. It is a big job as hydrocarbons currently provide 80% of the world's energy.

In Australia, there is vigorous debate going on about the pace of the transition. The Federal Government has joined our State Governments in committing Australia to net zero CO_2 emissions by 2050. The Federal Government's plan is to harness technology, not taxes, to get Australia to net zero (see the Federal Government's Low Emissions Technology Statement 2021).

But Tony Wood of the Grattan Institute says more than technology is needed. He suggests:

- implementing sector-based policies to reduce emissions now, including a cap on vehicle emissions, a bigger role for current policies including the Emissions Reduction Fund, the Safeguard Mechanism and energy efficiency obligations;
- giving priority to funding of research and development of emissions-reducing technologies (such as hydrogen electrolysers, fuel cells and green steel) and their supply chains, to drive down the cost of technology;
- more investment in the electricity grid and better integration of state renewable electricity schemes; and
- designing market-based policies which efficiently and effectively share the cost of getting to net zero within and between sectors.

Whether the Federal Government's transition plan is judged a success will depend on whether it can cushion the Australian public and industry from the volatility that will inevitably occur in the Australian energy and business sectors.

Business is seeking to transition at a faster pace – particularly the energy sector. Ms Kerry Schott, the Chair of the Energy Security Board, recently predicted that coal power will disappear from the National Electricity Market by the mid-2030s if not earlier, cutting short the rated life of some generators by more than a decade. Already, Santos has announced a merger with Oil Search, Woodside with BHP Petroleum and AGL is seeking to restructure. Change is happening.

The Business Council of Australia wants Australia to push harder to take advantage of the opportunities presented by the energy transition:

> *"Our solar, wind and rare earth metals are direct inputs in the production of renewable electricity, clean hydrogen and ammonia, and lithium-metal batteries. They are also indirect inputs in the production of a range of clean, mineral-based products such as green steel and green aluminium. And we sit on the doorstep of many of the largest and fastest-growing global markets for green products in the Asia-Pacific region."*

In an "electrified" world a lot more **green** electrons will be required. Early in October 2021, the US Energy Information Administration **(EIA)** released its International Energy Outlook 2021 (IEO2021) Reference case. The EIA projects that:

> *"absent significant changes in policy or technology, global energy consumption will increase nearly 50% over the next 30 years. Although petroleum and other liquid fuels will remain the world's largest energy source in 2050, renewable energy sources, which include solar and wind, will grow to nearly the same level."*

In a low-carbon economy, the fundamentals according to Sonia Zugeli of ESG Playbook are to:

> *"use less; emit less; regenerate, restore and repair; measure, disclose and track. These are the vital steps to progress."*

7. Climate change – the biggest "E" risk

Climate change abatement and mitigation by governments, businesses and the community is the biggest environmental ("E") issue on the international agenda at the moment, as it will be for many years to come.

As the world works to slow down the rise in the Earth's temperature to below 2.0 degrees and hopefully less than 1.5 degrees, the mantra now is to "electrify everything".

In the **World Economic Forum's Global Risks Report 2021 (16th Edition)**, the top three global risks by likelihood were: extreme weather, climate action failure, human environmental damage.

The Deputy Governor of the Reserve Bank of Australia, Guy Debelle, recently said:

> *"Climate change is a first-order risk for the financial system. It has a broad-ranging impact on Australia, both in terms of geography and in terms of Australian businesses and households. Most Australian financial institutions now recognise climate as a risk."*

The risk to business, if it is not serious about climate change abatemtent and mitigation, will come from the courts, the regulator, their shareholders and the community.

7.1
The Courts: What has been happening in the court system?

Internationally, a court in the Hague has recently found, on application by the Dutch arm of Friends of the Earth and Greenpeace Nederland (amongst others), that the sustainability policy of Royal Dutch Shell (**RDS**) was insufficiently *"concrete"*. Significantly, the court found that RDS owed a duty of care to Dutch residents to reduce CO2 emissions, having regard to standards that have been widely accepted by the global community.

In Australia, proceedings have been brought in the Federal Court against the Federal Government alleging that in the issue of Treasury Bonds since 7 July 2020, the Government has failed to disclose the risk of a changing climate to investors and as a result engaged in misleading and deceptive conduct in breach of the *Australian Securities and Investments Commission Act* and the *Corporations Act* (O'Donnell v Commonwealth). These proceedings are ongoing, with the Commonwealth due to file its defence by 16 December 2021.

More recently in late August 2021, the Australasian Centre for Corporate Responsibility commenced legal action against Santos Limited in the Federal Court alleging that certain of its "green" claims are misleading and deceptive in breach of the *Australian Consumer Law* and the *Corporations Act*.

A number of cases have also been brought by activist groups against the Federal Environment Minister and the NSW Environmental Protection Authority, in which the courts have imposed a duty on the regulators and decision makers to consider climate change when exercising their statutory duties and functions.

Addisons' Insight: Duty on regulators and decision makers to consider climate change when exercising statutory functions

7.2
The Law and the Regulator: What are the regulators expecting of company directors?

Given the rising chorus from governments and regulators, internationally and domestically, as to the risk of climate change, directors must now accept that the risk of a changing climate to their business is *foreseeable* and may be *material*. They must therefore take action to address the risk. This will require directors to, as mentioned previously, identify, assess, manage, mitigate and report on the climate risks relevant to their business.

One priority for the Australian Securities & Investments Commission (**ASIC**) in 2021-2022 is to focus on climate risk governance and disclosure by Australian companies. The ASIC administers the *Corporations Act*, which requires a public company to disclose, in its annual directors' report, the likely developments in the company's operations in future years and, for listed entities, the material business risks affecting the future prospects of the company, which may include climate risks (see **ASIC Regulatory Guide 247: Effective disclosure in an operating and financial review**).

The ASIC is encouraging Australian listed companies and their directors to adopt a proactive approach to emerging risks, including climate risk, and to use **TCFD's Recommendations** as the primary reference for corporate disclosures (see ASIC's 2018 **Report 593: Climate risk disclosure by Australia's listed companies**).

The ASX Corporate Governance Council (ASX Council) is also encouraging the use of **TCFD's Recommendations** for ASX-listed companies, which are required to report on an *"if not, why not"* basis against the ASX Council's **"Corporate Governance Principles and Recommendations"**. Relevantly, Recommendation 7.4 states:

> *"A listed entity should disclose whether it has any material exposure to environmental or social risks and, if it does, how it manages or intends to manage those risks."*

The ASX Council goes on to say in relation to climate risk that listed companies should have particular regard to:

- risks related to the transition to a lower-carbon economy, including policy and legal risks, technology risk, market risk and reputation risk; and
- physical risks, such as changes in water availability, sourcing, and quality; food security; and extreme temperature changes affecting an organisation's premises, operations, supply chains, transport needs, and employee safety.

7.3 Where should directors start in framing a corporate response to climate change abatement and mitigation?

To start off the assessment of your company's risks to a changing climate, consider:

1. The physical risks to your company's assets

- This includes both the long term effect of changes in the climate as well as the frequency and magnitude of extreme weather events on your company's assets, including floods, heatwave, drought and extreme winds.
- Also consider impairment of assets and issues relating to the insurance cover of those assets.

2. The transition risk of adjusting to a low-carbon economy

- This includes the effects on your company of changes in government policy and technology, supply change disruption and the possibility of having stranded assets.
- The demand, supply and pricing of your products may also be affected, particularly with changing consumer preferences.

3. The litigation risk of "greenwashing" or not responding appropriately to the threat of climate

- This risk can be mitigated by adopting an effective Environmental and Social Risk Policy that is implemented across all decision-making and operational levels.

Knowledge:

What is "greenwashing"?

As consumers show growing preference towards environmentally sustainable products and services, regulators have observed a temptation by companies to market products and services without truly designing or modifying them to have a real impact on climate change abatement and mitigation.

This is the underlying issue of "greenwashing", which refers to the practice of misrepresenting:

- a company's sustainability-related practices – e.g., having only nominal processes for addressing ESG issues that have no substantive effect at the operational level; or
- the sustainability-related features of a company's products and services – e.g., having insufficient evidence to substantiate a claim regarding the sustainability of a product or service.

A poor choice of words when framing your response to climate risk, abatement and mitigation, can leave your company open to a claim for "greenwashing".

Practical Tip:

How can you avoid being seen as a "greenwasher"?

Using words like *"commitment", "ambition"* and *"aspiration"* in relation to your company's plan to mitigate climate risk may convey more than you intend and thus their use should be carefully considered lest your company be accused of misleading or deceptive conduct or conduct that is likely to mislead or deceive.

When structuring claims regarding carbon emissions, consider your target market and how that claim may be perceived by that target market. If you are making claims in an annual report, your target market will be both investors in your company and potential investors as well.

Assess the claims you intend to make before they are published using the following guardrails:

1. Consider the express claims you are making and ensure you have factual substantiation to support them.
2. If an express claim you are making is vague and has numerous potential meanings, you must have substantiation for all possible meanings. Otherwise, amend the claim so that it is more precise with a meaning that is supportable.
3. If a claim is scientific in nature, ensure the substantiation you have is recent, credible and represents the balance of the scientific opinion at the time the claim is made.
4. If making future claims, i.e., in the nature of predictions or forecasts, ensure you have a reasonable basis for making them.
5. If a claim is a forecast or prediction, ensure it is consistent with your company's road-map.
6. Include any carve outs or detail any assumptions that may impact the achievement of any part of the claim you are making.
7. Keep records of the substantiation you have for all claims you are making, before you make them.
8. Stand back from all the claims you are making and consider the overall impression (or net impression the reader will take) from the claims you are making.

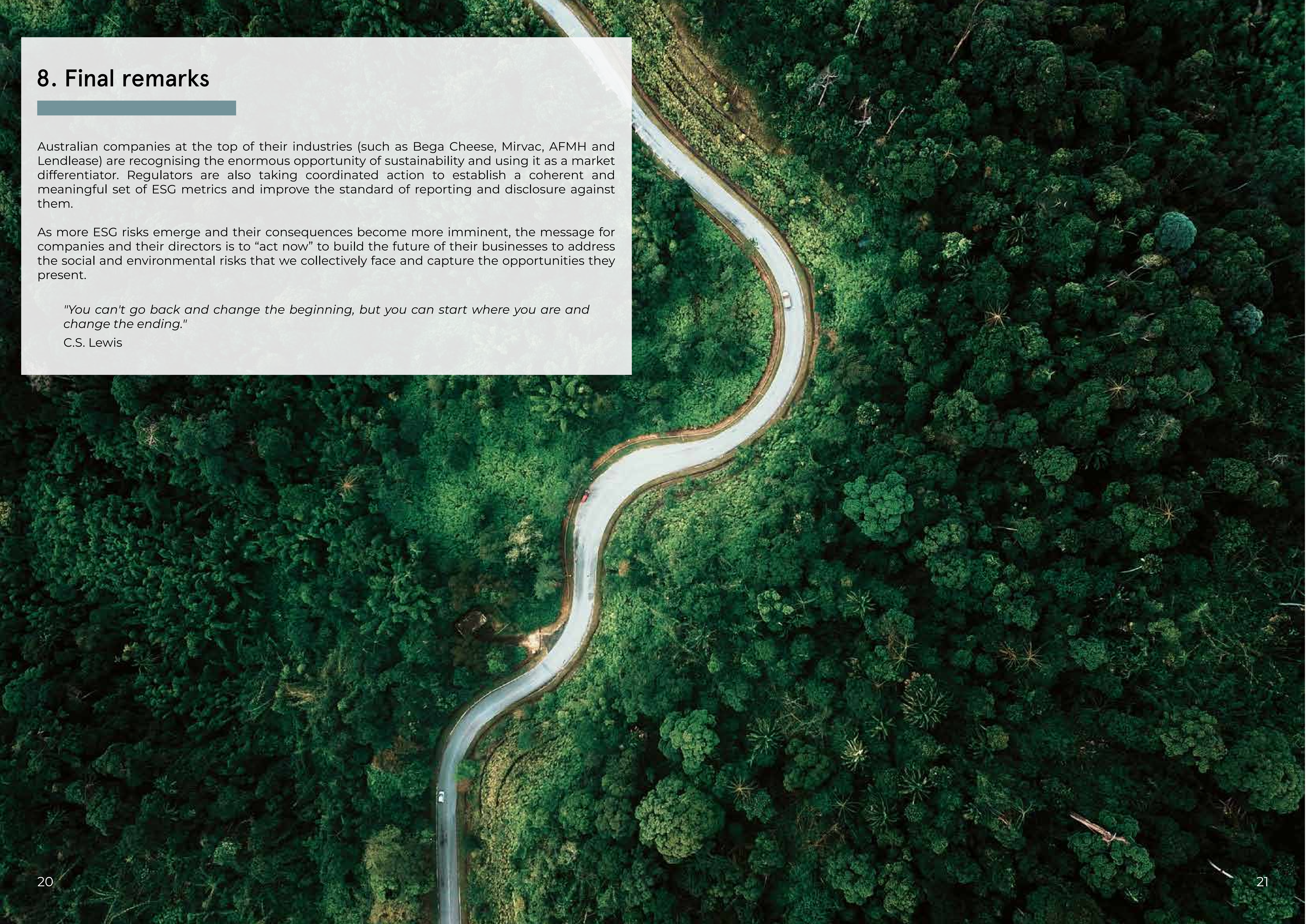
Addisons' Insight: Litigation commenced against Santos for "greenwashing": a warning of things to come

8. Final remarks

Australian companies at the top of their industries (such as Bega Cheese, Mirvac, AFMH and Lendlease) are recognising the enormous opportunity of sustainability and using it as a market differentiator. Regulators are also taking coordinated action to establish a coherent and meaningful set of ESG metrics and improve the standard of reporting and disclosure against them.

As more ESG risks emerge and their consequences become more imminent, the message for companies and their directors is to “act now” to build the future of their businesses to address the social and environmental risks that we collectively face and capture the opportunities they present.

> *"You can't go back and change the beginning, but you can start where you are and change the ending."*
>
> C.S. Lewis



9. Useful resources

9.1 Australian resources

9.1 Australian resources	Home page
Australian Accounting Standards Board (AASB) and Auditing and Assurance Standards Board (AUASB) **Climate-related and other emerging risks disclosures: assessing financial statement materiality using AASB/IASB: Practice Statement 2**	**aasb.gov.au/ (AASB)** **auasb.gov.au/ (AUASB)**
Australian Circular Economy Hub	**https://acehub.org.au**
Australian Government Department of Agriculture, Water and the Environment **National Waste Policy Action Plan** **Recycling Modernisation Fund**	**https://www.awe.gov.au/**
Australian Prudential Regulatory Authority (APRA) Prudential Practice Guide - **Draft CPG 229 'Climate Change Financial Risks'**	**www.apra.gov.au**
Australian Securities & Investments Commission (ASIC) **Consultation Paper 347 – 'Proposed amendments to the prohibition on order incentives in the ASIC market integrity rules'** **Regulatory Guide 228 – 'Prospectuses – Effective disclosure for retail investors'**	**asic.gov.au**
ASX Corporate Governance Council **Corporate Governance Principles and Recommendations (4th Edition)**	**www2.asx.com.au/about/regulation/asx-corporate-governance-council**
Australian Institute of Company Directors **Climate Governance Initiative Australia**	**aicd.companydirectors.com.au/**
Australian Sustainable Finance Initiative (ASFI)	**www.sustainablefinance.org.au**
Council of Financial Regulators **Working Group on Financial Implications of Climate Change**	**www.cfr.gov.au**
Investor Group on Climate Change	**igcc.org.au**
Responsible Investment Association Australasia **Responsible Investment Benchmark Report Australia 2021**	**responsibleinvestment.org**
Senate Economics References Committee **Report – 'Carbon Risk: A Burning Issue'**	**www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics**
The Centre for Policy Development (CPD) **'Climate Change and Directors' Duties' – Memorandum of Opinion (7 October 2016)** **Supplementary Memorandum of Opinion (26 March 2019)** **Further Supplementary Memorandum of Opinion (23 April 2021)**	**www.cpd.org.au**

9.2 International resources

9.2 International resources	Home page
Climate Disclosure Project	**www.cdp.net/en**
Climate Disclosure Standards Board (CDSB) **CDSB Framework for Reporting environmental & Climate Change Information**	**www.cdsb.net/**
Climate Governance Initiative (CGI) and Commonwealth Climate and Law Initiative (CCLI) **Primer on Climate Change: Directors' Duties and Disclosure Obligations**	**https://climate-governance.org/** **ccli.ouce.ox.ac.uk/ (CCLI)**
Global Reporting Initiative **GRI Standards** **A Practical Guide to Sustainability Reporting Using GRI and SASB Standards**	**www.globalreporting.org/**
International Energy Agency (IEA) **Net Zero by 2050 – A Roadmap for the Global Energy Sector**	**www.iea.org/**
IFRS Foundation **IFRS Standards**	**www.ifrs.org/**
Intergovernmental Panel on Climate Change (IPCC) **Climate Change 2021: The Physical Science Basis** **Regional fact sheet: Australasia**	**www.ipcc.ch/**
International Integrated Reporting Council **Revised <IR> Framework**	**www.integratedreporting.org/**
Network for Greening the Financial System	**www.ngfs.net/en**
Sustainability Accounting Standards Board (SASB) **SASB Industry Standards** **A Practical Guide to Sustainability Reporting Using GRI and SASB Standards**	**www.sasb.org/**
Task Force on Climate-Related Financial Disclosures (TCFD) **TCFD Recommendations** **Implementing the Recommendations of the Task Force on Climate-Related Financial Disclosures**	**www.fsb-tcfd.org/**
The Principles of Responsible Investment (PRI)	**www.unpri.org/**
United Nations Sustainable Development Goals	**sdgs.un.org/goals**
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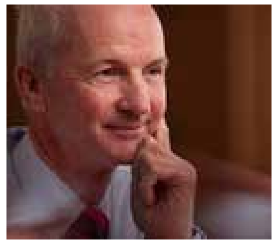

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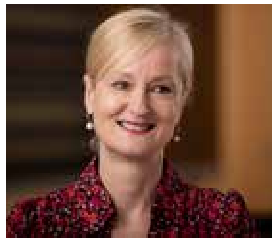

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