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Environmental, social and governance

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In recent years, there has been increased social, economic, and political pressure for more accountability, regulatory scrutiny and disclosure requirements on companies operating in Australia who face a rapidly evolving reporting and regulatory landscape that differs across jurisdictions and industries. Businesses are increasingly embracing responsible commercial practices with a focus on environmental, social and governance (ESG) issues for a sustainable future. There is an expectation on directors to be equipped to understand and oversee ESG issues, report on and respond to relevant ESG related risks.

1. Environmental

Companies and their shareholders and customers are increasingly concerned about the financial and reputational risks posed by poor environmental and sustainability practices. Environmental considerations include greenwashing, depletion of natural resources, pollution, waste, land contamination, loss of biodiversity, energy use, sustainable resourcing, recycling, and business' contribution to climate change via greenhouse gas emissions.

Australia has legislated at the federal level to achieve net zero emissions by 2050 under the National Greenhouse and Energy Reporting Act which also established the National Greenhouse and Energy Reporting Scheme. Under the Scheme, companies in Australia who emit the most greenhouse-gas emissions (currently 251 companies) must reduce their emissions every year until net zero is achieved in 2050. Companies may offset their greenhouse gas emissions to meet their emissions reduction targets through purchasing carbon credits on a tradeable market. Eligible companies must register with the Scheme and report annually to the Clean Energy Regulator about their compliance with emissions reduction targets. They must also publish their greenhouse gas emissions in their annual reports.

Greenwashing describes the practice by a company to convey a false impression or present misleading information about how environmentally friendly, sustainable or ethical a company is, or that the company is making a greater positive environmental impact than it actually is. In Australia, greenwashing may amount to misleading and deceptive conduct which attracts civil liability and, in some cases, criminal liability. ASIC has announced that it will focus on prosecuting greenwashing and the enforcement of disclosure obligations relating to sustainability and governance by listed companies, managed funds, superannuation funds and green bonds.

There is a growing trend of listed companies in Australia voluntarily making sustainability and climate-related disclosures against international sustainability frameworks, and ASIC encourages listed companies to use the Task Force on Climate-related Financial Disclosures (**TCFD**) recommendations as the primary framework for voluntary climate-related disclosures.

In addition to imposing mandatory reporting requirements on the top greenhouse gas emitters, the federal government has proposed changes to company reporting requirements and directors' duties under the *Corporations Act 2001*. If passed into law, the proposed changes would mandate that all companies disclose climate-related risks to their operations, starting with large companies in a phased approach. Companies would be obliged to disclose information about climate-related financial risks and opportunities, any climate-related targets (if applicable) and the strategies and policies of the company in mitigating risks and meeting targets. Further, proposed mandatory reporting requirements under the Financial Climate Reporting Bill (to be disclosed in the entity's annual sustainability report) includes a climate statement on the entity's governance, strategy, risk management, metrics and targets, any notes to the climate statement, additional statements required by any prescribed legislative instrument concerning environmental sustainability matters and a directors' declaration (about the climate statement and any corresponding notes).

2. Social

Social factors can include modern slavery, human rights, labour standards across the supply chain, pay equity and adherence to workplace and industry health and safety standards. Companies usually have diversity and inclusion policies and should be mindful of public perception of their business engagement and impact on the community.

Mandatory reporting obligations required under the *Modern Slavery Act 2018* (Cth) has resulted in increased compliance obligations for organisations and a need for directors to be aware of statements made by the company.

3. Governance

Governance (discussed at Chapter 4 above) refers to themes surrounding corporate governance and behaviour, including ethics, corruption, transparency, response to sanctions, political contributions, anti-competitive practices, human rights abuses, and corporate sustainability.

Corporate governance practices of listed companies are guided by the fourth edition of the ASX Corporate Governance Council's Principles and Recommendations. As discussed in Chapter 4, the proposed Fifth edition is expected to be released in early 2025 and ready for adoption in the financial year starting 1 July 2025. Listed entities should be aware of additional disclosure obligations expected under the Fifth edition.

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